STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☒ Affirm and adopt	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Brian Boland,
Petitioner,
vs.

14IWCC0041
NO: 01 WC 13908

City of Chicago,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issue of nature and extent of Petitioner's permanent partial disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 11, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JAN 2 3 2014
KWL/vf
O-1/14/14
42

Kevin W. Lamborn

Daniel R. Donohoo

Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0041

BOLAND, BRIAN
Employee/Petitioner

Case# 01WC013908

CITY OF CHICAGO
Employer/Respondent

On 6/11/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0146 CRONIN PETERS & COOK
JOHN J CRONIN
221 N LASALLE ST SUITE 1454
CHICAGO, IL 60601

0766 HENNESSY & ROACH PC
JOSEPH A ZWICK
140 S DEARBORN 7TH FL
CHICAGO, IL 60603

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

14IWCC0041

Brian Boland
Employee/Petitioner

v.

City of Chicago
Employer/Respondent

Case # 01 WC 13908

Consolidated cases: N/A

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Barbara N. Flores**, Arbitrator of the Commission, in the city of **Chicago**, on **March 15, 2013 and April 12, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☐ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other **Section 5(b)**

FINDINGS

14IWCC0041

On **January 25, 2001**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **$60,103.68**; the average weekly wage was **$1,155.84**.

On the date of accident, Petitioner was **44** years of age, *married* with **no** dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has not* paid all appropriate charges for all reasonable and necessary medical services as explained *infra*.

Respondent shall be given a credit of **$486,028.43** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$486,028.43**.

Respondent is entitled to a credit of **as agreed by the parties** under Section 8(j) of the Act. *See* AX1.

ORDER

Medical Benefits

Respondent shall pay reasonable and necessary medical services from the University of Chicago contained in Petitioner's Exhibit 1 as provided in the Act.

Respondent shall be given a credit for such medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Permanent Partial Disability

Respondent shall pay Petitioner permanent partial disability benefits of $516.15/week for 200 weeks, because the injuries sustained caused the 40% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $516.15/week for 66.5 weeks, because the injuries sustained caused the Petitioner 35% loss of use of the left hand, as provided in Section 8(e) of the Act.

Credit

As explained in detail in the Arbitration Decision Addendum, Respondent is entitled to a credit pursuant to Section 5(b) of the Act totaling $15,630.53.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

June 11, 2013
Date

JUN 11 2013

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION *ADDENDUM*

Brian Boland
Employee/Petitioner

v.

City of Chicago
Employer/Respondent

Case # **01** WC **13908**

Consolidated cases: **N/A**

FINDINGS OF FACT

The only issues in dispute are whether Respondent is liable for one medical bill, the nature and extent of Petitioner's injury, and whether Respondent is entitled to any credit under Section 5(b) of the Act in relation to a third party settlement agreement. Arbitrator's Exhibit ("AX") 1. The parties have stipulated to all other issues. AX1.

Background

Petitioner testified that he worked for Respondent as an operating engineer. His responsibilities included operating and maintaining heavy equipment including anything from changing parts to making repairs. On the date of injury, Petitioner was driving a front end loader and climbed up a ladder to check fuel levels and the oil when the ladder broke. Petitioner testified that he fell onto a pile of bricks and busted up his left arm and low back. He testified that he was in a lot of pain and that the bone was sticking out of his left arm.

The Arbitrator notes that the facts regarding Petitioner's medical care as a result of his injury at work are essentially undisputed.

Medical Treatment

Petitioner testified that he went to the Christ Hospital emergency room where he received pain medication and was told that he needed to see an orthopedic surgeon. The next day, Petitioner went to Mercy Works at Respondent's request where he was referred to Dr. Heller. PX2. Petitioner concurrently followed up with physicians at MercyWorks while receiving his primary medical care elsewhere through February 16, 2006. PX2.

Petitioner's left arm was casted on January 30, 2001 through March 16, 2001 when Dr. Heller ordered occupational therapy. PX2. On April 16, 2001, Dr. Heller recommended an arthroscopy and debridement of the left wrist. *Id.* On May 2, 2001, Dr. Heller performed the recommended surgery and Petitioner then underwent postoperative occupational therapy. *Id.* Petitioner complained of continued symptomatology in the back and left wrist and requested a second opinion.

On April 6, 2001, Petitioner saw Dr. Daley at Hinsdale Orthopedics who diagnosed him with a left distal ulnar shaft fracture healing with distal radial ulnar joint symptoms, possible TFCC tear. PX3. Dr. Daley referred Petitioner to his partner, Dr. Lorenz, for the back. *Id.* Petitioner saw Dr. Lorenz on June 21, 2001, who diagnosed him with radicular complaints with low back pain secondary to his fall. *Id.*

On July 9, 2001, Dr. Lorenz referred the Petitioner to Dr. Schiffman for follow up treatment for his left wrist. *Id.* Following an August 15, 2001 left wrist MRI, Petitioner came under the care of Dr. Schiffman who recommended various surgical options. *Id.*

Petitioner returned to Dr. Schiffman on October 17, 2001 who agreed with Dr. Fernandez's recommendations. PX3. Petitioner underwent a second left wrist surgery on November 8, 2001 with a preoperative diagnosis of left wrist pain, rule out maybe carpal instability. *Id.* Dr. Schiffman performed a left wrist stress exam under anesthesia and diagnostic left wrist arthroscopy and diagnosed him postoperatively with left wrist pain. *Id.*

Petitioner continued follow up with Dr. Schiffman through December 26, 2001, at which time he referred Petitioner to Dr. Mass at the University of Chicago for a second opinion prior to scheduling a mid carpal fusion surgery. *Id.* On January 21, 2002, Dr. Mass examined Petitioner, administered an injection which gave Petitioner some side-to-side pain relief, and recommended a scaphoid excision and mid carpal fusion or a PRC. PX5. On April 4, 2002, Petitioner underwent a third left wrist surgery with a preoperative diagnosis of left wrist mid carpal instability. PX3. Specifically, Dr. Schiffman performed a left wrist mid carpal fusion with scaphoid excision. *Id.* Petitioner continued to follow up with Dr. Schiffman and underwent occupational therapy. *Id.*

On August 14, 2002, Dr. Schiffman referred Petitioner back to Dr. Lorenz for his low back pain complaints. *Id.* Petitioner saw Dr. Lorenz on August 28, 2002. *Id.* Dr. Lorenz diagnosed Petitioner with L4-5 and L5-S1 annular tear with S1 radiculopathy bilaterally. *Id.* He ordered an updated MRI and, on September 19, 2002, he recommended an epidural steroid injection. *Id.*

On October 2, 2002, Dr. Schiffman placed Petitioner at maximum medical improvement and recommended a functional capacity evaluation ("FCE") with regard to Petitioner's left hand. *Id.* On the same date, Dr. Lorenz concurred and recommended holding off on a second epidural steroid injection until after the FCE. *Id.*

Petitioner underwent the recommended FCE on November 11, 2002, which was deemed valid and recommended a work conditioning program. *Id.* Dr. Lorenz noted that upon completion of the recommended work conditioning program, he would entertain recommendation of the discogram, post-discogram CT and possible surgery to Petitioner's low back. *Id.*

On December 17, 2002, Petitioner reported a stabbing pain in his back, which the physical therapists noted was not a symptom at his last work conditioning session on December 13, 2002. *Id.* Petitioner was given the option to continue work conditioning, stop work conditioning and return to work with restrictions, or undergo a discogram. *Id.* Dr. Lorenz performed the discogram on January 24, 2003 and Petitioner returned for follow up on February 4, 2003 at which time he diagnosed Petitioner with L4-5 and L5-S1 annular tear with left radiculopathy. *Id*; PX4. Dr. Lorenz recommended a L4-L5 and L5-S1 interbody fusion with posterior spinal fusion with instrumentation and iliac crest bone graft. PX3.

On April 4, 2003, Petitioner returned to Dr. Schiffman who released him to work with a permanent restriction of no lifting over 20 pounds and noted that he might have possible problems with heavy moving. *Id.* He instructed Petitioner to return as needed. *Id.*

On March 25, 2003, Petitioner saw Dr. Andersson at Midwest Orthopedics at Rush for a second opinion regarding his back. PX4. Dr. Andersson recommended a second epidural steroid injection prior to undergoing a multilevel fusion and discectomy. *Id.* Petitioner underwent the injection in April, but it did not help. *Id.* Petitioner also saw Dr. An on May 20, 2003 at Dr. Andersson's referral, who prescribed an intradiscal

electrothermal therapy ("IDET") procedure at L4-5 and L5-S1 to treat Petitioner's back pain. *Id.* The medical records reflect that, after extensive consideration and discussion with Dr. An as of September 9, 2003, Petitioner did not proceed with the IDET procedure. *Id.* Petitioner also testified that he decided not to undergo the recommended low back surgery due to an unrelated immunological disease that greatly decreased his chances of surviving surgery.

On December 10, 2003, Petitioner underwent an FCE which placed him at a sedentary to light duty functioning level with a maximum of 10 pounds lifting from waist to overhead, 15 pounds of lifting from waist to chest, no lifting below the waist level, recommended changing positions every 15 minutes, and to avoid stairs. *Id.* On December 18, 2003, Petitioner returned to Dr. Andersson who agreed with the limitations noted Petitioner's FCE results, but referred Petitioner to a pain management clinic and for acupuncture (as a possible pain relief alternative) for his low back. *Id.* Petitioner testified that he does not believe that he underwent any pain management treatment. *But see* PX5 (Petitioner reported that after he was placed at maximum medical improvement, he continued to see Dr. Ficaro, a chiropractic orthopedist specializing in pain management), PX2 (Petitioner reported going to pain management twice per week and for acupuncture in 2008), and PX7 (Petitioner reported to Ms. Entenberg that he underwent acupuncture with Dr. Ficaro in 2012).

Petitioner testified that he received a letter dated February 6, 2004 and told that someone would contact him about job placement. Then, he received a letter from Respondent's personnel department dated February 2, 2005 and on February 10, 2005 he met with someone from the personnel department to fill out forms and they discussed possible jobs. Petitioner testified that he did not hear back from them.

Petitioner returned to MercyWorks several times between 2005 and 2008. PX2. On February 7, 2005 he was examined, diagnosed with lumbar degenerative disc disease and status post three left wrist surgeries, placed at maximum medical improvement, and released to limited duty work including no repeated bending/stooping/squatting, ground level work only with no ladders/heights, minimum walking/climbing/use of stairs, no operating hazardous or fast moving machines, and sedentary work only allowing for a position change every 15 minutes. *Id.* On April 16, 2006, Petitioner's work restrictions were amended to include no prolonged standing, no repeated bending/stooping/squatting, and no lifting over 10 pounds. *Id.* On March 2, 2007, Petitioner's work restrictions were amended to include no repeated bending/stooping/squatting, minimal walking/climbing/use of stairs, and no lifting over 10 pounds. *Id.*

On October 23, 2007, Petitioner received another such letter and on October 29, 2007, he met with Ashley Pak where they discussed a watchman position. Petitioner testified that he told Ms. Pak that this job, which required him to work 16 hour shifts and to walk, was contrary to his restrictions. On May 21, 2008, Petitioner testified that he was instructed to report to the Jardine water plant for a security position. *See also* PX5. He testified that he only made it 12 hours into the 16 hour shift and could not work any further despite prescription use of Vicodin for pain at the time.

Petitioner returned to MercyWorks on March 18, 2008 at which time his work restrictions were amended to include seated duty if available, ability to alternate position as needed, no prolonged walking/standing, no repeated bending/stooping/squatting/pushing/jerking/twisting, ground level work only with no ladders/heights, and no lifting over 10 pounds. *Id.*

Petitioner submitted to an independent medical evaluation at Respondent's request on May 1, 2008 with Dr. Walsh. RX1. Dr. Walsh diagnosed Petitioner with lumbar degenerative disc disease and status post 4-corner fusion in the left wrist. *Id.* He concluded that there was no clear evidence of a causal relationship between

Petitioner's low back condition or mid carpal instability and his accident at work, however, he also opined that the accident did likely cause the distal ulnar fracture. *Id.*. Dr. Walsh noted that the medical records reflected a low back contusion and that, if Petitioner's degenerative disc disease was aggravated by the injury at work, it would have resolved 6-8 weeks thereafter. *Id.* Dr. Walsh further opined that Petitioner should be capable of performing the job duties of a watchman and that Petitioner's permanent restrictions were likely the result of the underlying degenerative condition and not related to the accident at work. *Id.*

On June 3, 2008, Petitioner saw Dr. Andersson who noted that he continued to be symptomatic from his severe degenerative disc changes with foraminal stenosis, central bulge and annular tear. PX4. Dr. Andersson issued permanent work restrictions limiting Petitioner to lifting no more than 10 pounds during an eight hour work day resulting in an "essentially sedentary" job. *Id.*

In a letter to Petitioner's counsel dated June 26, 2008, Dr. Andersson reiterated that while he believed Petitioner had severe degenerative disc disease in March of 2003, his accident in 2001 was serious enough to aggravate his underlying condition and cause the problems that he had since experienced. *Id.*

On July 7, 2008, Petitioner suffered an injury to his right wrist and was thereafter treated by Dr. Fernandez. RX2. Shortly thereafter, Petitioner was also diagnosed with complex regional pain syndrome. *Id.* Petitioner testified, and the medical records reflect, that this injury was not work-related.

Vocational Rehabilitation & Continued Medical Treatment

At Respondent's request, Petitioner met with David Pastavas ("Mr. Patsavas") of Independent Rehabilitation Services on November 26, 2008. PX6. Mr. Patsavas completed an initial vocational assessment report dated February 18, 2009 in which he opined that Petitioner was a candidate for vocational rehabilitation services, Petitioner needed additional training, and that he would work with Petitioner and Respondent to attempt to find job placement with Respondent. *Id.*

Mr. Patavas re-opened his file on August 21, 2009 and issued a report thereafter dated October 30, 2009. *Id.* Mr. Patsavas met with Petitioner on three more occasions. *Id.* Mr. Patsavas developed a resume for Petitioner, identified appropriate computer classes and skills training classes for him, noted that he would provide Petitioner with job leads, and noted that Petitioner was confident he could work in some positions with Respondent but was less optimistic regarding his employability elsewhere. *Id.*

The medical records reflect that Petitioner reported various physical activities and abilities while he saw Dr. Fernandez for treatment of his unrelated right hand condition. RX2. On cross examination questioning, Petitioner could not recall aggravating his symptoms or performing the activities as described in the medical or physical therapy records as follows:

- On September 9, and October 6, 2009, Petitioner reported to Dr. Fernandez and a physical therapist at Southwest Hand Rehab that he had attempted to chase or fight off three young men that were " 'robbing his [elderly] neighbor's house' " when he tripped and fell and landed with both hands outstretched resulting in bilateral wrist pain (worse on the right). *Id.*
- On September 23, 2009, Petitioner reported to a physical therapist that he had increased symptoms in the right hand "while running on a treadmill at the gym for approximately 1 hour[,]" that he "continued to run until he achieved his time goal[,]" and that his symptoms decreased after he stopped running. *Id.*

- On October 29, 2009, Petitioner reported "making gains in activity tolerance and returning to regular activity such as going to the gym." *Id.* He also reported that, on October 27, 2009, he "'may have overdone it' when he helped a friend erect a flagpole." *Id.* The physical therapy record goes on to reflect that "[Petitioner] dug the hole and opened heavy gravel bags, using his fingers to tear thick plastic. He has not been able to use his Right hand since that episode...."
- On November 3, 2009, Petitioner reported that "he performed heavy yard work and symptoms were exacerbated, especially during and following the task of pruning branches." *Id.*

Mr. Patsavas issued two more progress reports dated January 15, 2010 and March 21, 2010. *Id.* Petitioner underwent recommended computer training classes and continued to meet with Mr. Patsavas through March 11, 2010. *Id.* Petitioner had never worked with a computer prior to his training and used the "hunt and peck" typing method during training, for which the instructor recommended additional practice at home for Petitioner to become familiar with the computer and keyboard. *Id.* Petitioner was enrolled at Daley College for computer classes and scheduled to meet with Respondent's human resource office on March 15, 2010 to create an online job profile through Respondent's online job application system. *Id.*

After completing the computer training and additional meetings and with Mr. Patsavas, he issued a final report dated April 30, 2010. *Id.* Mr. Patsavas noted that, despite Petitioner's extensive work history in the field of engineering with Respondent, he had not been gainfully employed as an engineer for the past 10 years which could be a major barrier to returning to work as an engineer in any capacity. *Id.* Petitioner testified that he never received any job offers while searching for work.

Petitioner returned to Dr. Andersson on August 5, 2010, August 20, 2010 and September 28, 2010 at which time he again recommended a two-level fusion surgery, but noted that Petitioner's treating physician (Dr. Flaherty) recommended that Petitioner hold off on the surgery due to his unrelated immune system disorder. PX4; RX5. Petitioner declined the surgery. *Id.*

On June 30, 2011, Petitioner submitted to an independent medical evaluation with Dr. Butler at Respondent's request. PX8. Dr. Butler diagnosed Petitioner with lumbar degenerative disc disease, spinal stenosis and a lumbar strain. *Id.* He opined that these conditions were related to Petitioner's work accident of January 25, 2001. *Id.* He also opined that Petitioner required ongoing restrictions and that a FCE was not medically necessary at the time given that Petitioner's symptom level was too high to justify undergoing such a test. *Id.*

In a letter to Petitioner's counsel dated January 19, 2012, Dr. Andersson reiterated his belief that Petitioner's 2001 injury aggravated Petitioner's underlying degenerative disc disease and caused a disc herniation. PX4.

On April 18, 2012, Petitioner was evaluated by Susan Entenberg at Petitioner's counsel's request. PX7. Based on Petitioner's subjective reports, unidentified medical and rehabilitation records, an operating engineer job description, and as otherwise explained in her report, Ms. Entenberg concluded that Petitioner was not a vocational rehabilitation candidate, he sustained a reduction in earning capacity, and no stable labor market exists for Petitioner. *Id.*

Additional Information

Petitioner and his wife filed a three-count complaint (two counts by Petitioner and one count by Petitioner's wife) in the Circuit Court of Cook County, Illinois against Hyundai Construction Equipment U.S.A., Inc. on September 17, 2001 in connection with injuries sustained on January 25, 2001. RX3. The complaint notes that

Petitioner reported injuries of a personal and pecuniary nature whereas his wife alleged loss of consortium. *Id.* An unsigned settlement statement reflects a distribution of $40,000.00 total proceeds paying $20,000.00 to Petitioner and $20,000.00 to his wife. *Id.*

Regarding his current condition, Petitioner testified that he has no energy, lives in pain, cannot do the things that he used to do with his kids, and he sleeps during the day a lot; he is a whole different person now.

ISSUES AND CONCLUSIONS

The Arbitrator hereby incorporates by reference the Findings of Fact delineated above and the Arbitrator's and parties' exhibits are made a part of the Commission's file. After reviewing the evidence and due deliberation, the Arbitrator finds on the issues presented at trial as follows:

In support of the Arbitrator's decision relating to Issue (J), whether the medical services that were provided to Petitioner were reasonable and necessary, and whether Respondent has paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds the following:

The only medical bill in dispute involves Petitioner's treatment at University of Chicago with Dr. Mass, who provided a second opinion regarding Petitioner's left hand/wrist condition. Respondent does not dispute causal connection with regard to Petitioner's left hand/wrist condition as a result of Petitioner's January 25, 2001 work accident. The Arbitrator finds that the bill is for reasonable and necessary medical care incurred by Petitioner and submitted in Petitioner's Exhibit 1 and orders such bill to be paid by Respondent as provided by the Act. Petitioner stipulated at trial that Respondent is entitled to a credit for any payment it made related to this bill.

In support of the Arbitrator's decision relating to Issue (L), the nature and extent of Petitioner's injury, the Arbitrator finds the following:

It is undisputed that Petitioner sustained an accident at work which resulted in three surgeries to the left hand, a recommended two-level low back fusion and discectomy, which Petitioner refused due to the increased risk of death presented by an unrelated medical condition, and permanent sedentary work restrictions. Petitioner contends that he is permanently and totally disabled as a result of his work accident. The Arbitrator views the evidence differently.

Given the totality of this record, the Arbitrator is not persuaded by the opinion of Petitioner's vocational rehabilitation expert, Ms. Entenberg, regarding Petitioner's lack of employability. Ms. Entenberg opined that Petitioner was wholly unemployable, that no stable labor market exists for him, and that he was not a good candidate for vocational rehabilitation services. Her opinions, however, are based largely on Petitioner's subjective complaints and recitation of his condition. Ms. Entenberg's report is devoid of the contradictory evidence submitted at this trial which reflects that Petitioner's physical capabilities were beyond that which he reported to Ms. Entenberg or, indeed, about which he testified at trial. To wit: Petitioner was unable to recall on cross examination whether he engaged in physical activities including helping install a flagpole, performing heavy yard work, running on a treadmill for an hour, and helping to "chase down" three men attempting to rob his elderly neighbor. Recitation of these acts are conspicuously absent in Dr. Andersson's records and indicate a higher level of physical capability than that of an individual as limited as Petitioner would have the Arbitrator believe he is based on his testimony at trial.

Petitioner's treating physicians and Respondent's Section 12 examiners, alike, opine that Petitioner is capable of at least performing sedentary work up to eight hours per day. Petitioner's one unsuccessful attempt to return to work for Respondent on May 21, 2008 as a watchman was closely followed by permanent work restrictions limiting him to sedentary work 8 hours per day or less and extensive vocational rehabilitation efforts. There is no evidence that Petitioner searched for any employment other than during the period of time when he worked with Mr. Patsavas and Petitioner's motivation, or lack thereof, to find employment is notable given that Petitioner has a college degree and taken in conjunction with discrepancies between his testimony at trial and reports to Ms. Entenberg compared to medical records. While Petitioner certainly needs accommodations for his physical condition, the Arbitrator finds the opinion of Mr. Patsavas that Petitioner is employable to be persuasive.

Based on the record as a whole, and as explained in detail above, the Arbitrator finds that Petitioner has established permanent partial disability to the extent of 40% loss of use of the person as a whole pursuant to Section 8(d)(2) and 35% loss of use of the left hand pursuant to Section 8(e) of the Act.

In support of the Arbitrator's decision relating to Issue (O), Section 5(b) credit, the Arbitrator finds the following:

Petitioner and his wife filed a three-count complaint against a third party (Hyundai) and settled the case for $40,000 with $20,000 paid to Petitioner and $20,000 paid to Petitioner's wife. Petitioner did not testify about the lawsuit, settlement or otherwise provide any evidence in contravention of Respondent's Exhibit 3. Respondent asserts that it is entitled to a credit based on the proceeds of this settlement.

Section 5(b) of the Illinois Workers' Compensation Act ("Act") provides that where a claimant sustains a compensable injury under circumstances creating legal liability for damages on the part of a third party, the claimant may take action to recover such damages against the third party. 820 ILCS 305/5(b). If the action against the third party results in a judgment "obtained and paid, or settlement is made with such [third party], either with or without suit, then from the amount received by such employee or personal representative there *shall be paid to the employer* the amount of compensation paid or to be paid by him to such employee or personal representative including amounts paid or to be paid pursuant to paragraph (a) of Section 8 of this Act." *Id* (*emphasis added*). Section 5(b) also states that "[i]n such actions brought by the employee or his personal representative, he *shall forthwith notify his employer* by personal service or registered mail, of such fact and of the name of the court in which the suit is brought, filing proof thereof in the action." *Id* (*emphasis added*). Thereafter, the employer may join in the action. *Id.*

In *Scott v. Industrial Commission*, the Illinois Supreme Court held that an employer may make a claim for credits on completion of the third party suit without having obtained a lien in that proceeding and that the employer does not waive its "ability to claim credits under section 5(b)." *Scott*, 184 Ill.2d 202, 216-17, 703 N.E.2d 81 (1998). The Court further noted that the Commission "is the proper place to determine whether an employer or its insurer is entitled to credits for amounts received by an employee in a third-party proceeding when lien rights have not been adjudicated by the circuit court." *Id.*

Since its decision in *Scott*, the Court has addressed the purpose of Section 5(b) of the Act in various circumstances. In *Taylor v. Pekin*, the Court reiterated its prior holding regarding the legislative purpose of Section 5(b), which it stated was enacted to allow both the employer and employee "'an opportunity to reach the true offender while preventing the employee from obtaining a double recovery.'" *Taylor*, 231 Ill.2d 390, 397, 899 N.E.2d 251 (2008) (*citing In re Estate of Dierkes*, 191 Ill. 2d 326, 331-32, 730 N.E.2d 1101, 246 Ill. Dec.

636 (2000), *quoting J.L. Simmons Co. ex rel. Hartford Insurance Group v. Firestone Tire & Rubber Co.*, 108 Ill. 2d 106, 112, 483 N.E.2d 273, 90 Ill. Dec. 955 (1985)). The Court went on to explain the 25% fee provision contained in Section 5(b) holding that it was added to the Act to ensure that both the employer and employee shared in the necessary costs of an employee's recovery against a third party. *Taylor*, 231 Ill.2d at 397.

The Illinois Supreme Court also addressed the propriety of allocating a portion of a third-party settlement for loss of consortium, among other issues, in *Glenn v. Johnson*. 198 Ill.2d 575, 579-80, 764 N.E.2d 47 (2002). In its analysis of facts not entirely applicable in Petitioner's case, the Court ultimately found that "the amount recovered for loss of consortium is for [the surviving spouse's] exclusive benefit and not subject to the workers' compensation lien of the decedent's employer." *Id.*, at 583.

In this case, Petitioner failed to notify Respondent as required by Section 5(b) of the Act about the lawsuit or settlement involving the accident occurring on January 25, 2001 and failed to pay Respondent its portion of the settlement money allocated to him minus costs. While Petitioner's failure to inform Respondent of his and his wife's lawsuit against a third party is unseemly and resulted in a $20,000 recovery for loss of consortium—an equal amount apportioned to Petitioner for his personal injuries—the Arbitrator finds that such recovery is exclusively for Petitioner's wife's benefit and not subject to the Act. *See Glenn*, 198 Ill.2d at 583. Such conduct may move employers and insurers to continually track publicly available records to ensure that their 5(b) rights are fully adjudicated when such claims are filed by injured workers against third parties.

Based on all of the foregoing, the Arbitrator finds that Respondent shall have a credit of $15,630.53 ($20,000 – $3,750 (75% of the $5,000 attorney's fees) – $619.47 (75% of the $825.96 costs)) pursuant to Section 5(b) of the Act commensurate with Petitioner's third party recovery of $20,000.

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

☒ Affirm and adopt	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Kenneth Johnson,
Petitioner,
vs.

14IWCC0042
NO: 12 WC 28643

G & D Integrated,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of meical expenses, UR non-certification and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 31, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JAN 2 3 2014
KWL/vf
O-11/25/13
42

Daniel R. Donohoo

Thomas J. Tyrrell

DISSENT

I respectfully dissent from the decision of the majority. I would find Petitioner failed to meet his burden of proof. I would reverse the Arbitrators decision. Upon a thorough review of the record, the objective evidence is that Petitioner has documented evidence of multilevel stenosis at C3-4, C4-5 and C5-6. There is no objective evidence that any nerve root is impacted by the stenosis. It is only Dr. O'Leary speculative conclusion that one, the C5 nerve root, could be contacted. Given the lack of any evidence of cervical impingement at any level, I would reverse Arbitrator Mathis' finding of a causal connection and of his awarding of the surgery proposed by Dr. O'Leary.

Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0042

JOHNSON, KENNETH
Employee/Petitioner

Case# 12WC028643

G & D INTEGRATED
Employer/Respondent

On 5/31/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

1004 BACH, ROBERT W
110 S W JEFFERSON ST
SUITE 410
PEORIA, IL 61602

0264 HEYL ROYSTER VOELKER & ALLEN
BRAD INGRAM
124 S W ADAMS ST SUITE 600
PEORIA, IL 61602

STATE OF ILLINOIS)
)SS.
COUNTY OF Peoria)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

14IWCC0042

Kenneth Johnson
Employee/Petitioner

v.

G & D Integrated
Employer/Respondent

Case # 12 WC 28643

Consolidated cases: None

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Stephen Mathis**, Arbitrator of the Commission, in the city of **Peoria**, on **March 27, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
L. ☐ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other **Prospective Medical and UR non-certification**

14IWCC0042

FINDINGS

On **July 11, 2012**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **$32,936.28**; the average weekly wage was **$633.39**.

On the date of accident, Petitioner was **45** years of age, ***married*** with **1** dependent children.

Petitioner ***has in part*** received all reasonable and necessary medical services.

Respondent ***has in part*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$0.00** for TTD, **$0.00** for TPD, **$0.00** for maintenance, and **$0.00** for other benefits, for a total credit of **$0.00**.

Respondent is entitled to a credit of $ under Section 8(j) of the Act.

ORDER

Respondent is ordered to provide and pay for future medical costs including surgery as prescribed by Dr. O'Leary, including all ancillary medical costs concerning same and all periods of temporary total and/or temporary partial disability incurred for treatment resulting from these procedures.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

ST Mathis

Signature of Arbitrator **STEPHEN MATHIS**

5-23-2013

Date

MAY 31 2013

FACTS

Petitioner, age 46, has been employed by Respondent assembling track links for Caterpillar tractors for approximately 10 years. On July 11, 2012 he was reaching back while facing forward to lift two 8 lb. track links onto a conveyor belt when he felt a pop in his right shoulder. He testified he noticed a sharp pain in the shoulder, locating it in the right upper back/trapezius area.

Petitioner's supervisor immediately sent him to IWIRC, the company doctor. He was seen there by Dr. Dru Hauter who noted that Petitioner complained of "a constant ache in his right shoulder and behind his right shoulder..." (Respondent's Exhibit 6).

Dr. Hauter put Petitioner on a 10 lb. weight restriction for his right arm, started him in physical therapy, prescribed Naproxen, and ordered an MRI of the right shoulder.

Petitioner testified he continued to have pain in his right shoulder/trapezius and arm weakness. When his symptoms did not improve, Dr. Hauter referred him to Midwest Orthopedics where he was seen on August 1, 2012 by Dr. Brent Johnson. Dr. Johnson noted that his primary complaint was "back pain". Petitioner testified that he was experiencing pain which he located in the right upper back. Dr. Johnson reviewed the MRI of the right shoulder which showed a labral tear and a cyst. Dr. Johnson did not feel these findings explained the "global weakness" in Petitioner's right arm and ordered an EMG study.

The EMG showed carpal tunnel, cubital tunnel and denervation encompassing C5, C6 and C7 nerve roots. It was felt that cervical radiculopathy was less likely and an upper trunk brachial plexus lesion more likely the cause of these findings.

Dr. Johnson referred Petitioner to his partner, Dr. Patrick O'Leary, a board certified spine specialist. Dr. O'Leary examined Petitioner on September 25, 2012 and noted a positive Spurling maneuver and profound weakness of the right arm in the biceps, wrist extension and deltoid. Left arm strength was normal.

Dr. O'Leary noted that an MRI of the cervical spine done on September 20, 2012 showed significant neuroforaminal stenosis at C4-C5, C5-C6 and to a lesser extent C3-C4 on the right. He recommended an MRI of the brachial plexus on the right to rule out a lesion. Based upon his objective examination findings, Dr. O'Leary felt Petitioner's injury was an aggravation of the degenerative arthritis and stenosis in his cervical spine. However, before recommending surgery, he wanted an MRI of the brachial plexus to rule out a lesion.

The brachial plexus MRI was performed on February 13, 2013 and was normal. Dr. O'Leary recommended an anterior cervical discectomy with fusion the next day.

Respondent sent Petitioner for an Independent Medical Examination to Dr. Morris Soriano on January 8, 2013. Dr. Soriano concluded that Petitioner's description of his injury could not have caused or aggravated the preexisting cervical spurring and neuroformainal narrowing shown on the MRI of September 20, 2012 at the

C3-C4, C4-C5, and C6-C7 levels. He further opined that Petitioner was most likely suffering from a "viral inflammation of the brachial plexus" which would heal in three to six months.

Dr. O'Leary's evidence deposition, taken on December 13, 2012, was introduced as Petitioner's Exhibit 3. He testified that he was board certified and restricted his practice to spinal surgery, estimating that he had performed 500 such surgeries in the past two years. Dr. O'Leary stated that it was not uncommon for patients with neck, shoulder and trapezius pain to undergo a number of studies to properly diagnose their problem. He stated that he regularly saw people who complained of shoulder problems that turned out to be cervical or neck related (p. 33, 29) and it was "incredibly common" to see patients where it is initially unclear whether they were suffering from neck or shoulder pathology (p.40). In summary, Dr. O'Leary stated that if the MRI of the brachial plexus was normal, that he would opine for the record that:

> "...this injury aggravated an underlying condition in his neck, and it is likely the responsible culprit for his arm weakness..." (p. 67).

In his note of February 26, 2013, he recommended a three level anterior discectomy with fusion at C3-C4, C5-C6, and C6-C7, and placed Petitioner under a 10 lb. weight restriction (Petitioner's Exhibit 1).

Dr. Soriano authored a second report dated March 13, 2013, in which he expressed the opinion that injury to the cervical spine was not consistent with Petitioner's description of the accident. In fact, he expressed the opinion that it:

> "...would have taken a fall from several stories, a massive car accident, or a crushing injury to the spine to have created an acute aggravation of three degenerative...levels."

Dr. Soriano reiterated his "brachial plexitis" diagnosis.

Dr. O'Leary authored a follow up report dated February 26, 2013 in which he reiterated that he had no doubt that the injury on July 11, 2012 aggravated Petitioner's cervical disc osteophyte complexes contributing to the stenosis shown on the cervical MRI and producing nerve root level symptoms in his right arm. He disagreed with Soriano's opinion as to the trauma necessary to aggravate the cervical pathology. He responded to Dr. Soriano's "viral plexitis" theory, stating there was no evidence to support such a finding, and noting that such a condition would be expected to improve over time. Petitioner testified he has had no improvement in his symptoms since the injury.

Dr. O'Leary concluded that:

> "...It is impossible to determine the exact etiology of the patient's symptoms, but given his overall clinical history, his examination is consistent with neck pain and a Spurling maneuver which reproduces cervical pathology and nerve root level symptoms which correlate with his exam, I believe the patient would benefit from the 3-level anterior cervical discectomy and fusion as I described..." (Petitioner's Exhibit 2, pg. 2)

At the hearing, Petitioner testified that prior to July 11, 2012, he had never suffered an injury to his right arm, right shoulder, or neck and had never been treated for any condition of ill-being in those areas. He had never missed work due to any right upper extremity problems, was not under treatment for a chronic condition of any kind, and was taking no medication prior to the injury on that date.

FINDINGS WITH RESPECT TO DISPUTED ISSUES:

With regard to (F) Is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator makes the following findings:

The Petitioner has carried the burden of showing that his current condition of ill-being is causally connected to the injury of July 11, 2012. The undisputed evidence is that Petitioner had no prior injury or treatment to his right arm, shoulder or neck areas. Following the injury on July 11, he has been consistently treated by doctors selected by his employer or by the company doctor for symptoms which are objectively shown to be present in his right arm, especially profound weakness.

Petitioner's treating doctor, Dr. Patrick O'Leary is a surgeon who explained at great length on cross examination in his evidence deposition that he frequently encounters patients with symptoms which require multiple tests to diagnose and often include both neck and shoulder complaints.

Petitioner's treating doctors have by the process of elimination and through the use of three MRI examinations, one CT scan, numerous x-rays, and an EMG, determined that Petitioner's symptoms are the result of an injury to the cervical spine.

The only alternative explanation offered by the Respondent is Dr. Soriano's assertion that Petitioner may be suffering from a viral inflammation of the brachial plexus. However, Dr. Soriano believes that this condition would improve and/or heal within three to six months. Petitioner testified at the hearing on March 27, 2013, almost eight and a half months after his symptoms began, that his symptoms had not improved and remained constant since the date of accident.

With regard to (J) Were the medical services that were provided to Petitioner reasonable and necessary? And (O) Prospective Medical and Utilization Review – Non-Certification, the Arbitrator makes the following finding:

Respondent's Exhibit 3 is a Utilization Review and Non-Certification of the surgery recommended by Dr. O'Leary. It has been rebutted by the totality of the medical evidence as set forth above, including Midwest

Orthopedics records of treatment, Dr. O'Leary's evidence deposition, and Dr. O'Leary's supplemental report of February 26th.

The Utilization Review Report of March 7, 2013 from Dr. James York gives as his reasons for denying approval that there has been no trial of injections or other conservative measures and that:

"…At present it is unclear regarding the origins of the claimant's neurologic dysfunction…"

In his supplemental report, Dr. O'Leary specifically states that it is his opinion that Petitioner is suffering from cervical pathology which he intends to address surgically. In addition, Dr. O'Leary testified during his evidence deposition that if the MRI of Petitioner's brachial plexus was negative, it would be his conclusion that the injury aggravated Petitioner's cervical condition and caused his symptoms.

Further, the medical evidence in this case, taken as a whole, demonstrates that Petitioner's treating doctors have determined the source of his symptoms to be an injury to the cervical spine. As to the election to proceed with surgery rather than injections, Dr. O'Leary explained this decision by stating in his February report:,

"…I think that further delaying surgery at this point is detrimental to him…"

This judgment by Petitioner's doctor is entitled to substantial weight in deciding whether the proposed surgery is reasonable and necessary and should be ordered in spite of non-certification. Petitioner is not required to undergo further non-surgical treatment if doing so would endanger his health.

For these reasons, the anterior cervical discectomy and fusion surgery is found to be reasonable and necessary treatment to address Petitioner's injury of July 11, 2012 and Respondent is ordered to approve and pay for such surgery and related treatment.

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Scott Darby,

Petitioner,

14IWCC0043

vs.

NO: 12 WC 25344

Armon, Inc. (F.E. Moran),

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, prospective medical care, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 26, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

No bond is required for removal of this cause to the Circuit court by Respondent. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JAN 2 3 2014

Michael J. Brennan

Mario Basurto

David L. Gore

MJB:bjg
0-1/16/2014
52

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

14IWCC0043

DARBY, SCOTT
Employee/Petitioner

Case# 12WC025344

ARMON INC (FE MORAN)
Employer/Respondent

On 3/26/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

2277 PATRICOSKI, MARK G PC
1755 S NAPERVILE RD
SUITE 206
WHEATON, IL 60189

2284 LAW OFFICES OF LAWRENCE COZZI
ASHLEY C VONAH
27201 BELLA VISTA PKWY STE 410
WARRENVILLE, IL 60555

STATE OF ILLINOIS)
)
COUNTY OF)

- [ ] Injured Workers' Benefit Fund (§4(d))
- [ ] Rate Adjustment Fund (§8(g))
- [ ] Second Injury Fund (§8(e)18)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(B)

14IWCC0043

Scott Darby
Employee/Petitioner

v.

Armon, Inc (F.E. Moran).
Employer/Respondent

Case # 12WC25344

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gregory Dollison**, Arbitrator of the Commission, in the city of **New Lenox, Illinois**, on December 10, 2012. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. [ ] Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. [ ] Was there an employee-employer relationship?
C. [x] Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. [ ] What was the date of the accident?
E. [ ] Was timely notice of the accident given to Respondent?
F. [x] Is Petitioner's current condition of ill-being causally related to the injury?
G. [ ] What were Petitioner's earnings?
H. [ ] What was Petitioner's age at the time of the accident?
I. [ ] What was Petitioner's marital status at the time of the accident?
J. [ ] Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. [x] Is Petitioner entitled to any prospective medical care?
L. [x] What temporary benefits are in dispute?
[ ] TPD [ ] Maintenance [x] TTD
M. [ ] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other

FINDINGS

On the date of accident, **July 13, 2012**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **$124,437.73**; the average weekly wage was **$2,393.03**.

On the date of accident, Petitioner was **50** years of age, ***single*** with 0 dependent children.

Respondent has not paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$7772.82** for TTD, $ for TPD, $ for maintenance, and $ for other benefits, for a total credit of **$7772.82**.

Respondent is entitled to a credit of **$0** under Section 8(j) of the Act.

ORDER

Respondent shall authorize the surgical procedure recommended by Dr. Gunderson.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of arbitrator

3/25/13
Date

ICArbDec19(b)

MAR 26 2013

FINDINGS OF FACT:

Petitioner testified that he is a 501 Aurora Union welder. Over the last ten years, he has worked for 50 – 60 employers. In June, 2012, he was sent to work for F.E. Moran (Respondent) at Larkin High School in Elgin, Illinois. He was assigned to work in a tunnel welding pipes. He testified that he worked in a tunnel that was 4 ½ feet tall. The tunnel had a 200 foot straight away, made an 'S' turn for 30 feet, then was straight for another 100 to 200 feet. The pipes were 20 feet long and weighed 18.5 pounds per foot. Petitioner worked with one other person installing pipe during the first week in the tunnel. Petitioner worked with two other people installing pipe during the second week in the tunnel. Petitioner testified that he had to "shoulder" the pipe, meaning he had to lift and rest it on his shoulder, prior to placing it in the hangers. He testified that every day after working in the tunnel, he felt very sore and iced his shoulders at night. He worked in the tunnel for approximately two-and-a-half weeks, or through July 11, 2012.

Upon completing work in the tunnel, Petitioner worked in the mechanical room. He testified that on July 13, 2012, two co-workers, Andy and Dave, asked him to assist lifting a large piece of pipe. The pipe was 10 feet long and weighed between 240 and 260 pounds. It rested on a jack stand approximately 36 to 40 inches off of the ground. Petitioner lifted it by positioning the pipe on his shoulder with his knees bent. Andy, Dave and Petitioner lifted the pipe at the same and carried it 60 to 70 feet to its destination. Petitioner testified that he lifted the pipe overhead to place it on a stand. When he pushed it overhead, Petitioner testified that he felt a burn in his left shoulder. Petitioner testified that after work on July 13, 2012, he informed his supervisor that he was sore and would not be working on the weekend/Saturday. He did not mention the burn to anyone at the work site.

Respondent has sign-out forms for employees with a line that asks, "did I get injured today?" Petitioner wrote "no" on the sign-out forms (See RX 2) during the timeframe he was working in the tunnel. Petitioner testified that he "was never advised to put on form when experiencing sprain/strain." Petitioner indicated that as in past, he presumed it was an ache/ pain which was not unusual for this line of work and it would resolve over the weekend. Petitioner testified that he "had no intention of seeking medical attention, he had every intention of returning to work Monday."

Petitioner testified that after work on July 13, 2012, his shoulder pain got progressively worse. By Saturday, his shoulder was so stiff that he could not move it. He called KSB Hospital in Dixon, IL. He was scheduled to see Dr. Gunderson.

Petitioner presented to Dr. Gunderson on July 16, 2012. At that visit, Petitioner completed a "Patient History Intake Form" indicating that his injury occurred "2 weeks ago" and was "possibly" job related. Petitioner wrote, "Excessive strenuous work resulting in shoulder soreness – persistently getting worse." After performing an examination and obtaining x-rays, Dr. Gunderson assessed left shoulder rotator cuff tear, full thickness. A MRI was ordered and Petitioner was advised to return to activities gradually, as tolerated and "as per limitations and restrictions discussed." It should be noted that the "Subjective" portion of Dr. Gunderson's notes show, "Workers-comp related (shldr): no." (PX 1)

Petitioner returned to Dr. Gunderson on July 20, 2012 after getting an MRI. Per Dr. Gunderson, the MRI revealed a partial thickness rotator cuff tear. At that time, Dr. Gunderson administered a subacromial space injection. Again, Petitioner was advised to return to activities gradually, as tolerated and "as per limitations and restrictions discussed."

Petitioner testified that after receiving the MRI, he spoke with "Ray and the safety guy." He reportedly informed them that he had a rotator cuff injury and required surgery. Petitioner indicated that he later learned that he was supposed "to write on sheet about any injury." Petitioner provided that he was never told to prepare any additional documents regarding an accident.

Petitioner followed up with Dr. Gunderson on August 22, 2012. Records from this visit show Dr. Gunderson noted that Petitioner's left shoulder problem was work related. Petitioner reported worsening shoulder complaints. Physical therapy was ordered. Dr. Gunderson noted that if therapy failed, surgery would be considered. Again, Petitioner was advised to return to activities gradually, as tolerated and "as per limitations and restrictions discussed." (PX 1)

On August 22, 2012, Dr. Gunderson authored a statement indicating that "...while I was not clear that there was a specific injury that occurred at work that his type of job would be the kind of job that would be certain to elicit or exacerbate symptoms such as his with the chronic overhead lifting and activities which are the highest risk factors for rotator cuff pathology." The doctor further stated, "In my opinion, it is at least as likely as not that his injury was caused by his repetitive overhead lifting work, especially given the temporal relationship of his symptoms and his recent episode of overuse at work..." The doctor also felt there was a "likelihood" Petitioner would require surgery. (PX 1)

Petitioner testified that his treating physician, Dr. Gunderson, did not provide him with documentation in the form of Out of Work slips indicating that he could not work or disability slips indicating he had work restrictions. Petitioner admitted that he did not provide the employer with any type of Out of Work slip or disability slip. Petitioner obtained light duty work in Dallas, Texas from a former employer, Application Services, Inc. He worked six weeks at the same rate of pay.

Christopher Lee Wright testified on behalf of Respondent. He has been employed by F.E. Moran since July, 2012 and worked with Petitioner for one week while in the tunnel. He is an apprentice plumber and pipefitter and his duties included installing pipe in the tunnel. Mr. Wright described the conditions in the tunnel, and the various tools available to assist in lifting pipe into the hangers. He testified that in order to lift the pipe into the hangers at the top of the tunnel, one person would push down on one end of the pipe, causing the other end to rise into the air. The raised end was slid into a hanger, which supported the pipe as the other end was placed into the adjacent hanger. This method allowed the employees to lift pipe without having to do it all manually. Mr. Wright also testified that working in the tunnel required working on your knees and in a squatting position. Lastly, Mr. Wright testified that soreness and stiffness is part of the job. He provided that unless he experiences "severe pain [he] would not check the box."

Ray Lavery testified on behalf of Respondent. He was the Project Superintendent and supervised the project at Larkin High School. He testified that he learned of Petitioner's injury on July 17, 2012 after receiving a phone call from Petitioner. Petitioner informed Mr. Lavery that he had gone to a doctor because he hurt his shoulder. X-rays were taken but Petitioner stated that he needed an MRI. Mr. Lavery asked Petitioner what happened, and Petitioner did not give a specific answer and did not say that the injury was work-related. Mr. Lavery informed Petitioner that he had to come in and fill out an accident report. Petitioner never returned to the work site to fill out an accident report nor did he provide disability slips or work restrictions.

On cross-examination, Mr. Lavery was asked if he explained the Safety Sign-In Sheet to Petitioner. Mr. Lavery responded affirmatively, indicating that on the first day Petitioner arrived at the project site, he informed Petitioner that if he had a cut or bruise to let the employer know. Mr. Lavery also indicated that an employee would not mark "yes" on the sheet if they experienced stiffness or soreness.

Jason Galoozis testified on behalf of Respondent. He has been employed as the Corporate Safety Director for F.E. Moran since August 18, 2010. He is knowledgeable about the "restrictive duty program" which is a program used by Respondent to accommodate employees with work restrictions. Through the program, Respondent has brought back to work 95-97% of injured workers at their regular rate of pay in a light duty capacity while injured. In order for an employee to be placed in the program, the employee must be seen at Concentra, provide documentation of work restrictions and pass a drug screen. Mr. Galoozis testified that Petitioner was never seen at Concentra and never provided documentation of work restrictions. To Mr. Galoozis' knowledge, Petitioner had no contact with Respondent after his call to Ray Lavery on July 17, 2012. Petitioner did not inform Respondent of the name of his treating physician. Given the nature of Petitioner's injury, Mr. Galoozis believed Respondent could have accommodated a light-duty work restriction from a physician. Mr. Galoozis could not confirm that Respondent provided Petitioner with safety training or orientation.

Petitioner testified that prior to the instant claim, he had no previous Worker's Compensation or injury claims (other than a burn injury in the 80's) and had never made previous shoulder complaints or sought/obtained medical attention for shoulder injuries.

At Respondent's request, Petitioner underwent a Section 12 examination with Dr. Nikhil Verma on November 29, 2012. In addition to performing an examination Dr. Verma obtained a history and reviewed the medical records generated by Dr. Gunderson. In his report, Dr. Verma noted that he also reviewed witness statements from Dennis Johnston, Jr., Raymond Lavery and Christopher Wright. Dr. Verma diagnosed left shoulder AC joint arthrosis with mild impingement. Also noted was degenerative rotator cuff tear with degenerative arthropathy. Dr. Verma opined that Petitioner's condition was not work related. The doctor explained that Petitioner's history was not consistent with acute trauma. He provided that the witness reports do no indicate that any specific acute traumatic event occurred. Dr. Verma noted that the patient intake form indicated that he had onset of symptoms over two weeks and that it was possibly related to work, but provided no distinct history of injury or trauma. Dr. Verma felt the surgical recommendation was appropriate but same was related to degenerative condition and not related to Petitioner's work activities. (RX 1)

With regard to issue (C) whether the accident arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds as follows:

The Arbitrator finds that Petitioner sustained an accidental injury that arose out of and in the course of his employment with Respondent on July 13, 2012. The Arbitrator notes that there was no evidence of any pre-existing left shoulder complaints of pain and/or medical treatment by Petitioner prior to employment with Respondent. There was no dispute that for approximately 3 weeks prior to the injurious occurrence on July 13, 2012, Petitioner was engaged in extensive and heavy lifting of piping material in a small tunnel for Respondent. The work performed by Petitioner required extensive overhead lifting as well as resting heavy piping on his shoulder prior to installation. Additionally, Petitioner assisted in lifting, carrying and overhead work of oversized piping on July 13, 2012.

Petitioner's unrebutted testimony demonstrate that he was subjected to repetitive and extensive overhead lifting while working in the tunnel for Respondent which resulted in soreness in his shoulders on each day. He also testified to experiencing a burning sensation in his left shoulder while manipulating oversize piping on July 13, 2012.

With respect to Respondent sign-out form wherein Petitioner wrote "no" in the area that asks, "did I get injured today?", Petitioner credibly testified that he "was never advised to put on form when experiencing sprain/strain." Petitioner indicated that as in past, he presumed it was an ache/pain which was not unusual for

this line of work and it would resolve over the weekend. Petitioner testified that he "had no intention of seeking medical attention, he had every intention of returning to work Monday." However, by Saturday, his shoulder was so stiff that he could not move it. At that point Petitioner sought medical attention. Petitioner's testimony is buttressed by the testimony of Mr. Wright who testified that soreness and stiffness is part of the job and that unless he experienced "severe pain [he] would not check the box." Also Mr. Lavery also indicated that an employee would not mark "yes" on the sheet if they experienced stiffness or soreness.

With regard to issue (F) whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds as follows:

The evidence in this case demonstrates that Petitioner has performed welding services for many years and has worked with 50 to 60 different employers. Prior to the instant claim, he had no left shoulder complaints nor had he seen a medical provider for same. During the three weeks prior to the date of accident, Petitioner was involved in continuous and extensive overhead lifting of heavy piping equipment. Additionally, on July 13, Petitioner testified that he assisted in lifting oversized heavy piping that resulted in a burning sensation to his left shoulder which was subsequently diagnosed by the treating physician as a rotator cuff tear requiring surgery. Petitioner's testimony is consistent with the work injury. Dr. Gunderson's diagnosis is also consistent with the work. During Petitioner's initial examination, medical notes indicated that the injury was possibly job related. Dr. Gunderson ordered an MRI and concluded a rotator cuff tear injury. On August 22, 2012, Dr. Gunderson wrote, "...while I was not clear that there was a specific injury that occurred at work that his type of job would be the kind of job that would be certain to elicit or exacerbate symptoms such as his with the chronic overhead lifting and activities which are the highest risk factors for rotator cuff pathology." The doctor further stated, "In my opinion, it is at least as likely as not that his injury was caused by his repetitive overhead lifting work, especially given the temporal relationship of his symptoms and his recent episode of overuse at work..."

Relying on Petitioner's credible testimony, the sequence of events and the records from Dr. Gunderson, the Arbitrator finds that Petitioner's left shoulder condition of ill-being is causally related to his employment with Respondent on July 13, 2012.

With regard to issue (K) whether Petitioner is entitled prospective medical care, the Arbitrator finds as follows:

Having found the requisite causal connection, the Arbitrator finds that Respondent shall authorize the surgery as prescribed by Dr. Gunderson.

With regard to issue (L) whether Petitioner is entitled to TTD, the Arbitrator finds as follows:

Although the Arbitrator finds that Petitioner sustained a compensable accident that resulted in left shoulder pathology, there is insufficient evidence to substantiate an award of any temporary total disability to date. Dr. Gunderson examined Petitioner on July 16, 2012, July 20, 2012 and August 22, 2012 and with respect to restrictions, indicated that Petitioner could "return to activities gradually, as tolerated, and as per limitations and restrictions discussed today." Dr. Gunderson did not indicate that Petitioner was temporarily totally disabled or restricted from work. Petitioner testified that he was never provided with Out of Work slips or documentation that he was unable to work, and in turn, never provided any Out of Work slips to Respondent. Also, in Dr. Gunderson's narrative report on August 22, 2012, there is no indication that Petitioner was unable to or restricted from work.

In order for a Petitioner to be awarded TTD benefits, he must show not only that he did not work, but also that he was unable to work. *Shafer v. Illinois Workers' Compensation Commission*, 976 N.E. 2d 1 (2011).

The record does not contain any medical documentation to support Petitioner's allegation that he is entitled to TTD benefits.

Additionally, it is undisputed that Petitioner did not provide disability documentation to Respondent. Had he done so, based on Jason Galoozis' testimony, it is likely that Respondent would have been able to accommodate Petitioner's work restrictions at his regular rate of pay. Mr. Galoozis testified that through the "restrictive duty program," Respondent can accommodate 95 – 97% of employees with work restrictions.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☒ Reverse Causal connection	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

HERMELINDA NEVAREZ,

Petitioner,

14IWCC0044

vs.

NO: 04 WC 16155

SLOANE VALVE COMPANY,

Respondent.

DECISION AND OPINION ON REMAND FROM THE CIRCUIT COURT

This matter comes before the Commission on Remand from the Circuit Court of Cook County. In the Order and Memorandum of Decision and Judgment dated March 15, 2012, the Honorable Robert Lopez Cepero vacated the Decision of the Commission entered on May 5, 2011. Judge Cepero ordered the Commission to enter an Order finding medical causation of the right shoulder injury for the accident date of February 13, 2004. The Court further ordered the Commission to determine the amount due for permanent partial disability, temporary total disability and the amount due for medical bills.

This matter was tried before Arbitrator Kurt Carlson on May 2, 2006. The issues in dispute were causal connection between the accident and the right hand and right shoulder condition. In his Decision dated July 17, 2006, the Arbitrator found causal connection between the accident of February 13, 2004 and the Petitioner's right hand condition. An award of two percent loss of use of the right hand was entered. The Arbitrator found no causal connection between the accident and the right shoulder injury. Temporary total disability benefits, medical expenses and permanent partial disability benefits were denied.

The Petitioner filed a timely review. The Commission affirmed and adopted the Decision of the Arbitrator on February 11, 2008.

14IWCC0044

The Petitioner filed a timely summons to the Circuit Court of Cook County. The Honorable Elmer Tolmaire, III entered an Order dated April 29, 2009 vacating the Decision of the Commission. The Court remanded the case back to the Commission to address factual issues raised in its April 29, 2009 Order.

The Commission reviewed the entire record and issued its Decision and Opinion on Remand on May 5, 2011. The Commission addressed each factual issue raised by the Honorable Tolmaire, III. The Commission issued a thorough Decision and cited facts that are replete in the record in support of its Decision. Based on its review of the record, the Commission affirmed and adopted the Decision of the Arbitrator.

The Petitioner filed a timely summons to the Circuit Court of Cook County. Judge Cepero entered a new Order on March 15, 2012 vacating the Decision of the Commission. Judge Cepero ordered the Commission to enter an Order finding medical causation of the right shoulder injury for the accident date of February 13, 2004. The Court further ordered the Commission to determine the amount due for permanent partial disability, temporary total disability and medical bills.

The Respondent filed a timely summons to the Appellate Court. In its Order dated August 23, 2012, the Appellate Court found that it lacked jurisdiction to hear the appeal. Therefore, the Appellate Court dismissed the appeal for want of jurisdiction.

Solely due to the Order from Judge Cepero, the Commission finds Petitioner's right shoulder injury is casually related to the work accident of February 13, 2004. The Petitioner is entitled to TTD from March 5, 2004 through January 21, 2005, representing 46 weeks of disability. The Commission notes that the Respondent stipulated to the TTD period in the Request for Hearing dated May 2, 2006. Further, the Commission awards the Petitioner medical expenses in the amount of $51,213.59. As a result of the accident, the Commission finds that the Petitioner sustained a partial thickness tear of the right rotator cuff representing 12.5% loss of use of the person-as-a-whole.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on July 17, 2006 is reversed in part as stated above, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $405.06 per week for the period of 46 weeks, from March 5, 2004 through January 21, 2005, which is the period of temporary total disability for which compensation is payable.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay the Petitioner the sum of $364.56 per week for a further period of 62.5 weeks, as provided by

Section 8(d)(2) of the Act, because the injuries sustained caused 12.5% loss of use of the person-as-a-whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay the Petitioner the sum of $364.56 per week for a further period of 3.8 weeks, as provided by Section 8(e) of the Act, because the injuries sustained caused 2% loss of use of the right hand.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner medical expenses pursuant to Section 8(a) of the Act not to exceed $51,213.59 with Respondent entitled to a credit in the amount of $50,933.59 pursuant to Section 8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the remainder of the Decision of the Arbitrator filed on July 17, 2006 is affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under Section 19(n), if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have a credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $43,100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JAN 2 3 2014

MJB/tdm
O: 1-16-14
052

Michael J. Brennan

Mario Basurto

David L. Gore

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Liza Enriquez,

Petitioner,

14IWCC0045

vs.

NO: 04 WC 50147

City Colleges of Chicago & Truman College,

Respondent.

DECISION AND OPINION ON REMAND

This matter comes before the Commission on Remand from the Illinois Appellate Court. On November 5, 2012, Justice Hoffman reversed the Commission's finding that Petitioner was entitled to temporary total disability benefits after October 11, 2006, and remanded the matter back to the Commission for entry of an award of temporary total disability benefits from February 17, 2006 to October 11, 2006. The remainder of the Commission Decision was otherwise affirmed.

In accordance with and pursuant to the order from the Illinois Appellate Court, the Commission hereby awards temporary total disability benefits from February 17, 2006 to October 11, 2006.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $576.03 per week for a period of 33-6/7 weeks, from February 17, 2006 to October 11, 2006, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $518.43 per week for a period of 81 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the 20% loss of use of Petitioner's left hand, 20% loss of use of Petitioner's right hand, and 20% loss of use of Petitioner's right ring finger.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JAN 2 3 2014
MJB/ell
o-01/16/14
52

Michael J. Brennan

David L. Gore

Mario Basurto

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Robert E. Cook,

Petitioner,

14IWCC0046

vs.

NO: 11 WC 40283

Illinois Department of Healthcare & Family Services,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, temporary total disability, causal connection, permanent partial disability, medical expenses, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 31, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

DATED: JAN 3 1 2014

David L. Gore

Mario Basurto

Daniel R. Donohoo

DLG/gal
O: 1/23/14
45

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

COOK, ROBERT E
Employee/Petitioner

Case# **11WC040283**

14IWCC0046

IL DEPT OF HEALTHCARE & FAMILY SERVICES
Employer/Respondent

On 5/31/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

1590 SGRO HANRAHAN DURR & RABIN LLP
ELLEN C BRUCE
1119 S 6TH ST
SPRINGFIELD, IL 62703

0499 DEPT OF CENTRAL MGMT SERVICES
MGR WORKMENS COMP RISK MGMT
801 S SEVENTH ST 6 MAIN
PO BOX 19208
SPRINGFIELD, IL 62794-9208

4993 ASSISTANT ATTORNEY GENERAL
ANDREW SUTHARD
500 S SECOND ST
SPRINGFIELD, IL 62706

0498 STATE OF ILLINOIS
ATTORNEY GENERAL
100 W RANDOLPH ST
13TH FLOOR
CHICAGO, IL 60601-3227

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PKWY*
PO BOX 19255
SPRINGFIELD, IL 62794-9255

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

MAY 31 2013

KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF Sangamon)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION 14IWCC0046

Robert E. Cook
Employee/Petitioner

v.

Illinois Department of Healthcare & Family Services
Employer/Respondent

Case # 11 WC 040283

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **D. Douglas McCarthy**, Arbitrator of the Commission, in the city of **Springfield**, on **May 6, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS 14IWCC0046

On **August 24, 2011**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **$37,455.15**; the average weekly wage was **$736.44**.

On the date of accident, Petitioner was **43** years of age, ***single*** with **0** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $2916.51 for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of $2916.51.

Respondent is entitled to a credit of **$0** under Section 8(j) of the Act.

ORDER

The Arbitrator finds as follows:

1. Petitioner's injuries arose out of the course of employment.
2. Petitioner's injuries are causally connected to his work injury.
3. Petitioner has been temporarily totally disabled and was unable to work from December 12, 2011 to January 6, 2012.
4. Respondent is responsible for Petitioner's medical invoices related to the August 4, 2011 work related injury as set forth in Petitioner's Exhibits, except those which pertain to treatment of the Petitioner's left trigger thumb.
5. The nature and extent of the injury is 25% of the left arm.

Having considered the evidence and testimony before the Commission the following is ordered:

1. The Respondent shall pay the reasonable and necessary medical services, pursuant to the medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act, for treatment of the Petitioner's injuries, as described above.
2. The Respondent has paid TTD in the amount of $2,916.51 which represents December 12, 2011 through January 6, 2012 and is entitled to a credit for said payments.
3. Furthermore, the Respondent shall pay the Petitioner permanent partial disability benefits of $441.86 per week for 63.25 weeks, as the injury sustained caused a 25 % loss of the left arm, as provided in Section 8 (e) of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

May 22, 2013
Date

MAY 31 2013

ROBERT E. COOK v. ILLINOIS DEPARTMENT OF HEALTHCARE & FAMILY SERVICES

2011-WC-040283 Springfield, IL

FINDINGS OF FACT

On August 24, 2011, Petitioner was employed as an Office Specialist for Respondent. Petitioner began his employment with Respondent in 2005 as an Office Clerk and was promoted to Office Specialist in 2008. (Rx. Ex. 1). Petitioner worked 8 ½ hour days with a 15 minute break in the morning, 1 hour for lunch, and another 15 minute break in the afternoon. His office is located in Springfield, Illinois.

The Petitioner testified that as an Office Specialist, his job responsibilities were to answer approximately 100-120 telephone calls a day on a Medicaid hotline and respond to, or direct these telephone calls to the appropriate individual. The Petitioner would manually enter codes into the keypad on his telephone that sat to the left of his computer to document the type of telephone call he received. Each telephone call lasted anywhere from five to seven minutes, depending on the needs of the caller. Petitioner also entered data regarding the telephone calls on his computer using a keyboard and mouse.

Petitioner testified, and exhibits were entered showing Petitioner's workstation (Rx. Ex. 3). Petitioner discussed these exhibits during his testimony and indicated that his filing cabinet was placed to the left of his desk and that his work station was consistent with the set-up shown in the exhibits with the telephone being in the upper left hand area of the desk and a filing cabinet to the left, with a computer and keyboard in the center of the desk. There was limited space on Petitioner's desk to move his telephone closer to the front of his desk. A box connected to Petitioner's telephone on the left side of the desk was for volume and muting. Petitioner was not authorized to move electronics. Petitioner testified that he was not allowed to move computer equipment and that was the IT Department's responsibility to make changes to the computer and telephone equipment at his workstation.

Petitioner began experiencing pain in his left arm and hands in March of 2011 when he was at work, including when trying to answer the telephone. Petitioner experienced pain in reaching, as well as tingling and numbness when leaning on his cabinet at his workstation. The pain worsened and Petitioner sought medical treatment from his primary care physician, Joseph Townsend, MD. After meeting with his

primary care physician Petitioner was referred to Edward Trudeau, MD. Petitioner was seen by Dr. Trudeau on August 24, 2011. (Px. Ex. 3). Dr. Trudeau found that the electro-diagnostic studies showed a very significant "ulnar nerve lesion at the left elbow." As such, Dr. Trudeau concluded that Petitioner suffered from ulnar neuropathy of the left elbow, severe in electro neurophysiologic testing terms consistent with the clinical assessment of Dr. Townsend. (Px. Ex. 3).

Petitioner saw Dr. Greatting on October 12, 2011. Dr. Greatting performed an extensive interview of Petitioner . Petitioner described that he has done his work with the Department of Healthcare & Family Services, "for about 3 ½ years. With his left hand, he will do various activities to answering the phone and transferring phone calls. With his right hand he will use a mouse. He will use both hands to do keyboard activities. He answers over 100 calls per day. He describes being very busy during work and doing frequent activities with his elbows, wrists and hands. He also describes resting his left elbow on a file cabinet next to his desk. He has developed numbness and tingling in the ring fingers and small fingers of his left hand. This was initially intermittent . . . He does describe getting increasing symptoms while doing his work activities during the day." (Px. Ex. 2).

Petitioner reported to Dr. Greatting that he is right-hand dominant and that he does have insulin-dependent diabetes mellitus and hypertension. (Id.). During the exam Dr. Greatting reported that the Petitioner had a positive Tinel's over his ulnar nerve in his left elbow and a negative Tinel's over his ulnar nerve in the left wrist and left carpal tunnel. Additionally, Dr. Greatting noted Petitioner had diminished sensation to light touch in the ulnar nerve distribution of his left hand, as well as significant weakness and atrophy in the ulnar innervated muscles in his left hand. Otherwise, it was reported that Petitioner had no weakness or atrophy in the radial and median nerve distributions. Dr. Greatting's impression was that Petitioner suffered from severe left cubital tunnel syndrome. Dr. Greatting stated in his plan that:

> I do think based on his history, his work activities have caused, contributed to, or aggravated the development of this condition. I did suggest to him that he try not to rest his arm on a hard surface. He would, in the future, benefit from his work place or station being evaluated and ergonomically modified as necessary. I think based on the severity of his left cubital tunnel syndrome he should undergo surgical treatment. This would consist of a release of his left ulnar nerve at the elbow. (Id.).

Dr. Greatting performed left ulnar nerve release surgery on December 12, 2011. Petitioner was also diagnosed with left trigger thumb which is not attributed to the work-related incident. Dr. Greatting indicated that, "The patient had history exam and EMG/Nerve Conductive Study findings consistent with left cubital tunnel syndrome." (Id.). Following his surgery, Petitioner was paid TTD from December 12, 2011 through January 6, 2012. (Rx. Ex. 4). Petitioner testified that although it was recommended that an ergonomic evaluation of his workstation be done and that he completed a form requesting the same, no evaluation was ever performed. Petitioner also testified that he was not given a gel pad for his computer keyboard or his mouse until after his surgery in December of 2011. Petitioner was not aware prior to his injury and surgery that gel pads or pull out keyboard were available.

Petitioner was seen on one occasion by James Williams, MD for a Section 12 Medical Examination. Dr. Williams drafted a report dated August 15, 2012. (Rx. Ex. 2). In his report, he wrote that following his examination of Petitioner and reviewing Petitioner's medical records, that Petitioner could have further improvement. Petitioner was suffering from a significant loss of sensation and strength on the left side, noting significant atrophy of the hypothenar eminence and the first dorsal interosseous. Dr. Williams felt the loss of sensation and strength on the left side was due to cubital tunnel syndrome. Dr. Williams recommended that Petitioner demonstrated ulnar nerve subluxation at the time of the visit and that he could be helped by an anterior transposition of the nerve. (Id.). Dr. Williams also wrote:

> I do not feel specifically his work duties, being the typing or the punching of the keys of which he did on his telephone to enter in what type of phone call it was or whether he was going on a personal break or work break or what type of job duty he was performing are significant, but if indeed he did rest his left arm on a file cabinet that obviously could be an aggravating factor in his development of cubital tunnel but would have been an activity which he did, one that work did not required him to do. That would be the only way I could see possibly that this could be an aggravation from his work. (Id.).

Dr. Williams stated in his report that Petitioner had non-work related risk factors for nerve entrapment, including obesity, hypertension, insulin dependent diabetes, and the fact that he found an additional muscle present at the time of surgery.

Petitioner testified he did not fully recover following the surgery and sought treatment with Dr. Greatting on February 20, 2013. Petitioner stated at the hearing that he took a copy of Dr. Williams' report recommending an anterior transposition of the nerve to his appointment with Dr. Greatting. According to Petitioner's records for February 20, 2013, it appears that Dr. Greatting reviewed the report, including Dr. Williams' recommendation, and concluded that, "I do not think there is much chance that any further surgery on his ulnar nerve, including subcutaneous or sub-muscular transposition would have a very high chance of success as far as improving the numbness or the weakness and atrophy. I told him I would basically recommend leaving things as is and would be doubtful that any further surgery would be beneficial to him. He will be seen back on an as needed basis." (Px. Ex. 2).

Petitioner testified that he lacks in dexterity and strength in his left arm. Six months following treatment his hand had not fully improved. In order to accommodate his condition, a special code was set up on his telephone for outgoing telephone calls with a speed dial number to call certain frequently dialed long numbers because his lack of dexterity caused him to misdial the numbers. After his injury was reported and he complained he was having this difficulty because of the injury and making error in keying these numbers, an accommodation was made. Petitioner was told to not inform other employees of this special coding that was done on his telephone.

Petitioner testified that following surgery he returned to work and that after the diagnosis of cubital tunnel syndrome his telephone was switched to the right side of his desk, there was a work restriction of no movement of his left elbow and Petitioner was able to perform his duties right-handed. After he returned to work, the left elbow was not aggravated because he was using his right for answering the telephone and typing to compensate for his left hand. Petitioner testified that from January, 2012 to August, 2012 he only worked right-handed and did not use his left hand for anything, even typing, because that is what his boss told him to do. In terms of activities of daily living, Petitioner said that his elbow hurts the most at work, but that he also experiences shooting pain in his arm when he folds laundry at home.

CONCLUSIONS OF LAW

1. The accident arose out of and in the course of Petitioner's Employment with Respondent and was causally connected to Petitioner's Employment with Respondent.

It is uncontradicted that the Petitioner answered and processed approximately 100 phone calls a day in his position as an office specialist, a position he has held since 2007. On each call, he had to reach to his left and make entries on the telephone keypad using his left upper extremity. He testified that he performed this activity while leaning on his left arm, which was on top of a file cabinet located next to his chair.

Respondent's Exhibit 3, photographs of the Petitioner's work station, clearly show that he worked in a typical cubicle with his phone located to his left. In order to reach its keypad, he had to rest his left arm on something. The file cabinet certainly could have been used for that purpose. Alternatively, the Arbitrator believes the Petitioner could have rested his left arm on his desk top, but again, he would have been leaning on it in order to reach his phone keypad. Based upon the photographs, the Arbitrator does not believe the Petitioner had any other alternatives, with the work station constructed as it was.

Both Dr. Greatting and Dr. Williams said that leaning on his elbow could have caused or aggravated the Petitioner's condition. (PX 2, 10-12-11 O.V.; RX 2)

Based upon this evidence, the Petitioner's repetitive accident clearly arose out of his employment, and his condition of ill being was causally related to said accident.

The case cited by the Respondent; Purtscher-Kulik v. LaHood Construction, 3 IIC 781 (2003), is clearly distinguishable. First of all there was conflicting testimony as to the frequency at which the Petitioner, a clerk, answered the phones each day. Secondly, the Petitioner did not tell either her primary care physician or her surgeon that in taking her phone calls she was forced to lean on her elbow. The Commission denied the claim based on the lack of medical testimony on causation. Here, as stated above, the Petitioner described how he leaned on his elbow to perform his job to all of the doctors who saw him for treatment or examination purposes.

2. Petitioner was entitled to Total Temporary Disability benefits.

Petitioner was temporarily totally disabled and was unable to work from December 12, 2011 to January 6, 2012. Petitioner received TTD benefits from Respondent for this period of time, and the evidence supports the fact that he was entitled to those benefits.

3. Petitioner's medical services are reasonable and necessary.

Section 8(a) of the Illinois Workers' Compensation Act requires the employer to pay for all medical services rendered by an employee who was injured during the course of employment. Petitioner has unpaid medical bills arising from his injury that need to be paid. Respondent is responsible for Petitioner's medical bills related to the August 24, 2011 work-related injury as set forth in Petitioner's exhibit submitted at Arbitration and shall reimburse Petitioner for any payments made by the Petitioner toward medical bills submitted at Arbitration.

Respondent is not however, liable for any of the charges related to treatment of the Petitioner's left trigger thumb. As stated above, there is no testimony to support a causal connection between that condition and the petitioner's work duties.

4. Nature and Extent.

Both Dr. Trudeau and Dr. Greatting characterized the Petitioner as having severe left cubital tunnel syndrome prior to surgery. Upon exams, he exhibited diminished sensation and significant strength loss with atrophy. Following surgery to release the entrapment, his condition has shown any significant improvement. Both Dr. Greatting and Dr. Williams found ongoing deficits of strength and sensation. Dr. Greatting's office note of Feb. 13, 2013, some fourteen months after surgery, shows the Petitioner with significant atrophy and weakness. Because of the persistence of severe symptoms and the fact that the Petitioner is an insulin dependent diabetic, Dr. Greatting felt that further surgery would not likely provide any relief. Dr. Williams' exam, performed nine months after surgery, revealed significant atrophy in the left hand and wrist and a subluxation of the ulnar nerve at the elbow. He concluded that the Petitioner had a significant loss of both strength and sensation.

The Petitioner described in a credible manner how he had to modify his job in order to continue to perform it. Given the above evidence, it does not appear that his condition will improve as time goes by.

Based upon the above evidence, the Arbitrator awards the Petitioner a 25% loss of use of his left arm for his accidental injuries.

Dated and Entered May 22, 2013

D. Douglas McCarthy, Arbitrator

STATE OF ILLINOIS)
) SS.
COUNTY OF DU PAGE)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Paul Rico,
Petitioner,

vs.

NO. 10 WC 43931

AGS Staffing,
Respondent.

14IWCC0047

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by Petitioner herein and notice given to all parties, the Commission, after considering, the issues of temporary total disability, medical expenses, and penalties and attorney's fees and being advised of the facts and law affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on February 19, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

14IWCC0047

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $2,500.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JAN 28 2014

Daniel R. Donohoo

o-12/17/13
drd/wj
68

Kevin W. Lamborn

Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

RICO, RAUL
Employee/Petitioner

Case# **10WC043931**

14IWCC0047

A S G STAFFING
Employer/Respondent

On 2/19/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.12% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

4220 LULAY LAW OFFICES
MICHAEL B LULAY
2323 NAPERVILLE RD SUITE 220
NAPERVILLE, IL 60563

1401 SCOPELITIS GARVIN LIGHT ET AL
VICTOR P SHANE
30 W MONROE ST SUITE 600
CHICAGO, IL 60603

STATE OF ILLINOIS)
)SS.
COUNTY OF DUPAGE)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

RAUL RICO ,
Employee/Petitioner

v.

A.S.G. STAFFING ,
Employer/Respondent

Case # 10 WC 43931

14IWCC0047

Consolidated cases: NONE.

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joann M. Fratianni**, Arbitrator of the Commission, in the city of **Chicago**, on **January 25, 2012.** And in the city of **Wheaton**, on **March 8, 2012.** After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☒ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☒ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other: _____

14IWCC0047

FINDINGS

On the date of accident, **October 11, 2010**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is in part* causally related to the accident.

In the year preceding the injury, Petitioner earned **$23,400.00**; the average weekly wage was **$436.00**.

On the date of accident, Petitioner was **28** years of age, *single* with **three** dependent children.

Petitioner *has in part* received all reasonable and necessary medical services.

Respondent *has in part* paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $ **6,229.64** for TTD, $ **0.00** for TPD, $ **0.00** for maintenance, and $ **0.00** for other benefits, for a total credit of $ **6,229.64**.

Respondent is entitled to a credit of $ **0.00** under Section 8(j) of the Act for medical benefits.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of **$319.00**/week for **27-1/7** weeks, commencing **October 19, 2010** through **April 26, 2011,** as provided in Section 8(b) of the Act.

The Arbitrator finds that Respondent shall pay to Petitioner the reasonable and necessary medical services of **Nuestra Clinica de Aurora** in the amount of **$1,429.39**, of **Midwest Neurosurgery & Spine Specialists** in the amount of **$582.95**, of **Elite Physical Therapy** in the amount of **$6,337.52**, of **The Center for Surgery** in the amount of **$13,597.92**, of **Dr. Kwang Hwang** in the amount of **$6,540.37**, of **Fox Valley Imaging Center** in the amount of **$2,701.90**, as provided in Section 8(a) and 8.2 of the Act.

The Arbitrator denies Petitioner's demands to order Respondent to provide and pay for future medical costs in the form of surgery as prescribed by Dr. Ross, including all ancillary medical costs concerning same and all periods of temporary total and/or temporary partial disability periods incurred for treatment resulting from these procedures, as this prescription for future care represents unreasonable and unnecessary medical care and treatment that is not causally related to this particular accidental injury.

The Arbitrator further denies Petitioner's demands for attorneys fees and penalties in accordance with Sections 16, 19(k) and 19(l) of the Act.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator JOANN M. FRATIANNI

February 8, 2013
Date

ICArbDec19(b)

FEB 19 2013

C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

Petitioner testified was an employee of a temporary employment agency on October 11, 2010. On that date, he was assigned to the Midwest Warehouse in Aurora. His job duties included operating a gas powered riding forklift to load and unload food, juices and canned goods, including some manual lifting to shift and arrange loads on forks and the floor. Petitioner had been assigned to that job and that location for 2-3 months full time.

On October 11, 2010, Petitioner was driving his forklift from the dry room to the cold room and had to pass through a dirty plastic curtain that he could not see through. His forks were set 6 inches above the ground. As he entered the curtain he honked and continued through it at around 8 miles per hour. At the same time, Mr. Rudy Duran was operating another gas powered forklift loaded down with product 10 feet in height, so that he could not see ahead. Mr. Duran was driving at a 90 degree angle towards Petitioner's forklift to the right of Petitioner. As Petitioner's forks passed through the curtain, the two forklifts collided at their forks.

Petitioner testified that there was no damage to the forks or product, but noticed the top pallet of product on Mr. Duran's forklift had shifted and was tilted like it could fall. Petitioner drove around and took off the top pallet using his forklift and set it down. When he set down the pallet, he observed Mr. Jay Scheckel, the safety supervisor, coming towards him, so he got off his forklift to talk to him. Petitioner testified that Mr. Scheckel told him he heard a noise from the impact and came to check what happened. Mr. Scheckel asked if the load was okay, and Petitioner informed him he had taken the top load off before it fell to avoid damage. Mr. Scheckel then turned around and left the scene.

Petitioner testified that he then went to the office to report the incident to his supervisor, Mr. Abraham Burciaga. At that time he indicated he had pain in his back. Petitioner was asked if he wanted to go to the company clinic, and he initially declined.

Petitioner later that day sought treatment at Tyler Clinic.

Based upon the above, the Arbitrator finds that on October 11, 2010, Petitioner sustained accidental injuries which arose out of and in the course of his employment by Respondent.

F. Is Petitioner's current condition of ill-being causally related to the injury?

See findings of this Arbitrator in "C" above.

Petitioner first sought medical treatment at Tyler Clinic on October 11, 2010, where he was diagnosed with a lumbar strain. On October 13, 2010, it was noted he had the same symptoms with radiculopathy of the right lower extremity. X-rays performed revealed mild narrowing of the L4-L5 intervertebral disc space. Petitioner was prescribed physical therapy and medications. He returned to the clinic on October 18, 2010 and was discharged from care. During this period of time Petitioner continued working.

Petitioner had two prior workers' compensation claims to his back, on April 29, 2004 and July 7, 2007, resulting in lumbar spine surgery at L4-L5 and L5-S1.

After discharge from Tyler Clinic, Petitioner sought treatment at Nuestra Clinica de Aurora where he saw Dr. Rivera. He was prescribed multiple medications along with a lumbar MRI. The MRI was performed on October 23, 2010 and revealed a combination of recurrent disc protrusion and right lateral scar tissue causing spinal stenosis.

Following the MRI, Petitioner was taken off of work by Dr. Rivera on October 19, 2010 and continued under his care through November 1, 2010. At that time, Dr. Rivera referred Petitioner to see Dr. Matthew Ross, a neurosurgeon.

Petitioner saw Dr. Ross on November 3, 2010. Dr. Ross felt that Petitioner suffered a recurrent disc herniation as a result of this work injury of October 11, 2010. Dr. Ross also felt Petitioner would be a good candidate for a surgical discectomy at L4-L5. Dr. Ross offered Petitioner the alternative of continued conservative medical management including epidural cortisone injections. Petitioner declined surgery. Dr. Ross kept Petitioner off work as of his first visit.

Petitioner then returned to see Dr. Ross on January 6, 2011. Dr. Ross noted some symptomology that could not b explained on that date. On February 10, 2011, Dr. Ross prescribed work conditioning. On March 17, 2011, Dr. Ross noted Petitioner reported getting stronger, but did not experience improvement in his pain. Dr. Ross prescribed a lumbar discogram and fusion surgery. Dr. Ross indicated that the L4-L5 disc was degenerative.

Petitioner saw Dr. G. Klaud Miller for examination at the request of Respondent. Dr. Miller examined Petitioner on March 16, 2011. Dr. Miller testified by evidence deposition that he based his examination on the history provided to him by Petitioner along with certain medical records of treatment and an accident investigation report prepared by Respondent. Dr. Miller testified the report indicated there was no contact between the two forklifts, but only disrupted the materials being carried. Dr. Miller reviewed the medical records of Tyler Clinic that indicated a normal neurological examination. Dr. Miller also reviewed Dr. Ross' diagnosis that indicated recurrent disc herniation. Dr. Ross had reviewed the MRI films performed before and after this accident of October 10, 2011. Dr. Miller felt the two studies were basically the same. Dr. Miller's neurological examination was also normal. Dr. Miller testified that he did not feel there was a causal relationship between Petitioner's complaints and his injury. He based his opinion on witnesses who indicated in the accident report that it was a minor impact and the comparison of the MRI films taken before and after the accident. Dr. Miller also did not feel additional surgery would be necessary as there was no evidence of any new disc herniations and Petitioner had undergone two prior back surgeries. Dr. Miller also disagreed with Dr. Ross that a recurrent disc existed and felt it was actually scar tissue. Dr. Miller felt that Petitioner may have suffered a lumbar sprain and that he was capable of returning to work.

On April 26, 2011, Dr. Ross indicated that he did not agree with the findings and conclusions of Dr. Klaud Miller, who examined Petitioner at the request of Respondent. Dr. Ross did feel that Petitioner could attempt a return to work full duty.

Petitioner returned to see Dr. Ross on August 11, 2011 and reported he had been working at a mattress factory since his last visit of April 26, 2011. Dr. Ross felt that Petitioner's options were to proceed with surgery or to work at a less back punishing job. Petitioner indicated to him that he was looking for a less physically demanding job and hoping to avoid surgery.

The testimony of the witnesses presented before this Arbitrator as to the impact of the forklifts indicates that the contact was minimal resulting in no damage to the forklifts, pallets or product. Petitioner's supervisor, Mr. Jay Scheckel was unaware of the alleged severity of the incident as he could not even recall more than a minor incident.

Mr. Abraham Burciaga testified that he was Petitioner's supervisor on the date of accident. He first learned of the incident after the fact. He testified he spoke to both forklift drivers and further performed his own investigation of the forklift, the pallets and the products involved. Mr. Burciaga testified there was no damage to any items he inspected and the co-worker driving the other forklift did not feel it was more than a minor impact.

Based upon the above, the Arbitrator finds that at best Petitioner sustained a lumbar sprain as testified by Dr. Miller and that there is no causal connection between the current condition of ill-being of a suspected recurrent disc herniation and the injury of October 11, 2010.

J. Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

Petitioner introduced into evidence the following medical charges that were incurred after this accidental injury:

Name of Provider	Billed Amount	Fee Schedule Amount
Nuestra Clinica de Aurora	$ 1,489.00	$ 1,429.39
Midwest Neurosurgy & Spine Specialists	$ 596.00	$ 582.25
Elite Physical Therapy	$10,180.00	$ 6,337.52
The Center for Surgery	$17,892.00	$13,597.92
Dr. Kwang Hwang	$ 6,685.00	$ 6,540.37
Fox Valley Imaging Center	$ 2,822.00	$ 2,701.90
Totals:	$39,664.00	$31,190.05

See findings of this Arbitrator in "C" and "F" above.

Based upon said findings the Arbitrator awards the above charges pursuant to the medical fee schedule created by the Act, as those charges represent reasonable and necessary medical care and treatment designed to cure or relieve the condition of ill-being sustained by this accidental injury.

Respondent is entitled to receive a credit as to all amounts paid by them.

K. Is Petitioner entitled to any prospective medical care?

See findings of this Arbitrator in "C" and "F" above.

Based upon said findings, the Arbitrator declines to order Respondent to pay for surgery to the lumbar spine as prescribed by Dr. Ross.

L. What temporary benefits are in dispute?

See findings of this Arbitrator in "C" and "F" above.

Petitioner was initially taken off work by Nuestro Clinica on October 19, 2010 and was kept off by Dr. Ross until April 26, 2011. At that time Dr. Ross felt Petitioner could attempt full duty work.

Dr. Miller, who examined Petitioner at the request of Respondent, felt that Petitioner could return to work subsequent to March 21, 2011.

Petitioner testified that he has been working since Dr. Ross' visit of April 26, 2011 and testified to being employed at the time of trial of this matter.

In addition, Respondent admitted into evidence various periods of surveillance performed on 10 separate occasions. The first period of surveillance was from July 12-15, 2011. This showed Petitioner getting in and out of his vehicle in a normal, unrestricted fashion on each day on several occasions. On each day it was clear that Petitioner was working, a fact that Petitioner admitted during his testimony.

Another period of surveillance occurred January 16-20, 2012. Petitioner admitted he was working during this period of time as well at a warehouse in Bolingbrook. As such, the surveillance videos were of limited assistance to the Arbitrator in this matter.

Based upon said findings, the Arbitrator further finds Petitioner was temporarily and totally disabled from work commencing October 19, 2010 through April 26, 2011, the date of Dr. Ross' release, and is entitled to receive temporary total disability benefits from Respondent for this period of time.

Based further upon said findings, all other claims of temporary total disability periods and benefits made by Petitioner in this matter are hereby denied.

M. Should penalties or fees be imposed upon Respondent?

See findings of this Arbitrator in "C" and "F" above.

Based upon said findings, the Arbitrator further finds that Petitioner has failed to prove that Respondent acted in a vexatious fashion in defending this claim or withholding benefits and medical expenses.

Based further upon the above, all claims made for penalties and attorneys by Petitioner in this matter are hereby denied.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Valerie Sharkey,
Petitioner,

vs. NO. 01 WC 70782

14IWCC0048

Pioneer Concepts, Inc.,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner herein and notice given to all parties, the Commission, after considering, the issues of accident, causal connection, temporary total disability, medical expenses, prospective medical expenses, and the nature and extent of Petitioner's permanent partial disability and being advised of the facts and law affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on March 11, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

14IWCC0048

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $4,600.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JAN 28 2014

Daniel R. Donohoo

o-01/14/14
drd/wj
68

Kevin W. Lamborn

Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION
CORRECTED

SHARKEY, VALERIE J
Employee/Petitioner

Case# **01WC070782**

PIONEER CONCEPTS, INC
Employer/Respondent

14IWCC0048

On 4/11/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.09% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0592 LAW OFFICES OF SCOTT B SHAPIRO
218 N JEFFERSON ST
SUITE 401
CHICAGO, IL 60661

0445 RODDY LEAHY GUILL & ZIMA LTD
ROBERT J DOHERTY JR
303 W MADISON ST SUITE 1500
CHICAGO, IL 60606

☐	Injured Workers' Benefit Fund (§4(d))
☐	Rate Adjustment Fund (§8(g)
☐	Second Injury Fund (§8(e)18)
☒	None of the above

STATE OF ILLINOIS)
)
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

CORRECTED ARBITRATION DECISION

VALERIE SHARKEY
Employee/Petitioner

Case #01 WC 70782

v.

14IWCC0048

PIONEER CONCEPTS, INC.,
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable Robert Williams, arbitrator of the Workers' Compensation Commission, in the city of Chicago, on November 26, 2012, and March 19, 2013. After reviewing all of the evidence presented, the arbitrator hereby makes findings on the disputed issues, and attaches those findings to this document.

ISSUES:

A. ☐ Was the respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?

B. ☐ Was there an employee-employer relationship?

C. ☐ Did an accident occur that arose out of and in the course of the petitioner's employment by the respondent?

D. ☐ What was the date of the accident?

E. ☐ Was timely notice of the accident given to the respondent?

F. ☒ Is the petitioner's present condition of ill-being causally related to the injury?

G. ☐ What were the petitioner's earnings?

H. ☐ What was the petitioner's age at the time of the accident?

I. ☐ What was the petitioner's marital status at the time of the accident?

J. ☒ Were the medical services that were provided to petitioner reasonable and necessary?

K. ☒ What temporary benefits are due: ☐ TPD ☐ Maintenance ☒ TTD?

L. ☒ What is the nature and extent of injury?

M. ☐ Should penalties or fees be imposed upon the respondent?

N. ☐ Is the respondent due any credit?

O. ☐ Prospective medical care?

FINDINGS

- On December 6, 2001, the respondent was operating under and subject to the provisions of the Act.
- On this date, an employee-employer relationship existed between the petitioner and respondent.
- On this date, the petitioner sustained injuries that arose out of and in the course of employment.
- Timely notice of this accident was given to the respondent.
- In the year preceding the injury, the petitioner's average weekly wage was $426.36.
- At the time of injury, the petitioner was 45 years of age, *single* with no children under 18.
- The parties agreed that the respondent paid $203.03 in temporary total disability benefits.
- The parties agreed that the petitioner is entitled to temporary total disability benefits from December 13 through 17, 2001.

ORDER:

- The respondent shall pay the petitioner temporary total disability benefits of $284.24/week for 7-3/7 weeks, from December 13, 2001, through December 17, 2001, and from February 21, 2002, through April 8, 2002, which are the periods of temporary total disability for which compensation is payable.
- The respondent shall pay the petitioner the sum of $255.82/week for a further period of 9.5 weeks, as provided in Section 8(e) of the Act, because the injuries sustained caused

the permanent partial disability to petitioner to the extent of 5% loss of use of her right hand.

- The respondent shall pay the petitioner compensation that has accrued from December 6, 2001, through March 19, 2013, and shall pay the remainder of the award, if any, in weekly payments.

- The medical care rendered the petitioner through November 29, 2002, was reasonable and necessary. The medical care rendered the petitioner after November 29, 2002, was not reasonable or necessary. The respondent shall pay the medical bills in accordance with the Act. The respondent shall be given credit for any amount it paid toward the medical bills, including any amount paid within the provisions of Section 8(j) of the Act, and any adjustments, and shall hold the petitioner harmless for all the medical bills paid by its group health insurance carrier.

- All claims for benefit after November 29, 2002, are denied.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Robert Williams

4/11/13
Date

APR 11 2013

FINDINGS OF FACTS:

The petitioner, a nurse trainee, sustained an injury to her right thumb/wrist on December 6, 2001, when her right wrist was grabbed by a resident. She received immediate care at South Suburban Hospital and reported pain and swelling over the distal radius aspect of her wrist. The doctor noted pain with range of motion and no neurological deficits. X-rays were negative for fractures or a dislocation. The petitioner reported right wrist pain and swelling, and numbness and tingling in her fingers to Dr. Labana of Olympia Orthopaedic Specialists on December 7th and continued symptoms on December 17th. His diagnosis was a right wrist sprain. An EMG and NCV on December 31st were normal with no evidence of right median or ulnar neuropathy or right radial sensory neuropathy. The petitioner reported improvement on January 3, 2002, but discomfort over her 1st dorsal compartment. Dr. Labana started anti-inflammatories and a rigid thumb spica splint for De Quervains tendinitis. The petitioner had an injection in her De Quervains on January 24th. Dr. Labana noted on February 26th that the petitioner had tenderness over her TFCC, pain on ulnar deviation, some tenderness over the first dorsal compartment and a positive Finkelstein test but negative carpal tunnel symptoms. A wrist arthroscopy and first dorsal compartment release was recommended. After his Section 12 examination of the petitioner on April 8th, Dr. Vender's diagnosis was De Quervains and a possible TFCC injury. Dr. Saxena saw the petitioner on August 19th and opined a diagnosis of De Quervains.

A surveillance video of the petitioner was taken on November 29th, which showed her using both hands carrying groceries, pushing a shopping cart and opening a car door. The petitioner started chiropractic care for back, neck and shoulder pain with Dr. Regan

on December 11th after an automobile accident on December 5th. In 2003, the petitioner treated for RSD of her right upper extremity with Dr. Saxena. The Section 12 examination of the petitioner and opinion by Dr. Traycoff on April 7th was that there was no evidence of CRPS or a TFCC tear with her right upper extremity. A bone scan on June 10, 2003, did not reveal any typical features of RSD. Dr. Lubenow started treating her for CRPS of her right hand on July 18th. Dr. Lubenow opined on November 12th that the petitioner did not have CRPS in her right upper extremity.

FINDING REGARDING WHETHER THE MEDICAL SERVICES PROVIDED TO PETITIONER ARE REASONABLE AND NECESSARY:

The medical care rendered the petitioner through November 29, 2002, was reasonable and necessary. The medical care rendered the petitioner after November 29, 2002, was not reasonable or necessary.

FINDING REGARDING WHETHER THE PETITIONER'S PRESENT CONDITION OF ILL-BEING IS CAUSALLY RELATED TO THE INJURY:

Based upon the testimony and the evidence submitted, the petitioner failed to prove that her current condition of ill-being with her right wrist and any RSD condition of ill-being is causally related to the work injury on December 6, 2001. A surveillance video of the petitioner on November 29, 2002, revealed her using her hands freely and easily without any guarding, hesitation or difficulty while lifting and carrying bags and a gallon of milk, picking up store merchandise and other activities. Surveillance videos on August 16 and 17, 2003, March 13, 2004, and December 14 and 15, 2007, also belie the petitioner's claim of disabilities with her right hand. It is not believable that the petitioner had De Quervains, a TFCC tear or RSD in her right hand and arm as of November 29, 2002, or thereafter. The petitioner is not believable or credible. The petitioner failed to

prove that she had De Quervains, a TFCC tear or RSD in her right hand on and after November 29, 2002. All claims for benefits after November 29, 2002, are denied.

FINDING REGARDING THE AMOUNT OF COMPENSATION DUE FOR TEMPORARY TOTAL DISABILITY:

Pursuant to Dr. Labana's advice, the petitioner stopped working on December 13, 2001, but returned to restricted work on December 17th. The petitioner was terminated on February 21, 2002, while on restricted work. Dr. Vender evaluated the petitioner on April 8, 2002, and opined that she was capable of performing her work activities. The respondent shall pay the petitioner temporary total disability benefits of $284.24/week for 7-3/7 weeks, from December 13, 2001, through December 17, 2001, and from February 21, 2002, through April 8, 2002, as provided in Section 8(b) of the Act, because the injuries sustained caused the disabling condition of the petitioner.

FINDING REGARDING THE NATURE AND EXTENT OF INJURY:

The petitioner had some pain and symptoms after her work injury, which resolved prior to November 29, 2002. The respondent shall pay the petitioner the sum of $255.82/week for a further period of 9.5 weeks, as provided in Section 8(e) of the Act, because the injuries sustained caused the permanent partial disability to petitioner to the extent of 5% loss of use of her right hand.

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Harry L. Koerner III,
Petitioner,

vs. NO. 12 WC 02408

14IWCC0049

Belec Electric, Inc.,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by Respondent herein and notice given to all parties, the Commission, after considering, the issues of accident, medical expenses and prospective medical expenses, employer-employee relationship, benefit rates and notice and being advised of the facts and law affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on March 28, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

14IWCC0049

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $400.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JAN 2 8 2014

Daniel R. Donohoo

o-12/17/13
drd/wj
68

Kevin W. Lamborn

Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

KOERNER, HARRY
Employee/Petitioner

Case# **12WC002408**

12WC001636

14IWCC0049

BELEC ELECTRICAL INC
Employer/Respondent

On 3/28/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0274 HORWITZ HORWITZ & ASSOC
MITCHELL HORWITZ
25 E WASHINGTON ST SUITE 900
CHICAGO, IL 60602

0210 GANAN & SHAPIRO PC
ELAINE NEWQUIST
210 W ILLINOIS ST
CHICAGO, IL 60654

STATE OF ILLINOIS)
)SS.
COUNTY OF Will)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Harry Koerner
Employee/Petitioner

v.

Belec Electrical, Inc.
Employer/Respondent

Case # **12** WC **2408**

Consolidated cases: **12 WC 01636**

14IWCC0049

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gregory Dollison**, Arbitrator of the Commission, in the cities of **Chicago and New Lenox, Illinois**, on **December 4, 2012 and December 19, 2012.** After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☒ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☒ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☒ What was the date of the accident?
E. ☒ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☒ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ Is Petitioner entitled to any prospective medical care?
L. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On the date of accident, **January 23, 2012**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **$80,009.80**; the average weekly wage was **$1,465.38**.

On the date of accident, Petitioner was **35** years of age, ***single*** with **1** dependent child.

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$0** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$0**.

Respondent is entitled to a credit of **$0** under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services of $272.00, as provided in Section 8(a) of the Act.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

3/27/13
Date

ICArbDec19(b)

MAR 28 2013

14IWCC0049

FINDINGS OF FACT

The arbitrator hereby incorporates and adopts the findings of fact from consolidated case number 12 WC 01636 herein.

On the issue of (A.) whether the respondent was acting under and subject to the Illinois Workers' Compensation Act on January 23, 2012, (A), the arbitrator hereby finds:

Section 3 of the Illinois Workers' Compensation Act states in relevant part, "The provisions of this Act hereinafter following shall apply automatically ... to all employers and all their employees, engaged in any department of the following enterprises or businesses which are declared to be extra hazardous, namely ... Construction, excavating or electrical work." 805 ILCS 305/3(3).

Petitioner in this matter was employed by Respondent as a journeyman electrician out of Local 176. While working for Respondent at the Shorewood construction site, Petitioner performed various aspects of electrical work, such as running conduit, pulling wires and connecting/terminating wires at electrical boxes.

Based upon Petitioner's credible testimony regarding his performance of electrical work while employed by Respondent, the Arbitrator finds that Belec Electrical, Inc., for whom such electrical work was performed, was operating under and subject to the Illinois Workers' Compensation Act, pursuant to Section 3(3) of the Act.

On the issues of (B) whether an employee-employer relationship existed between the petitioner and the respondent, (C) whether an accident occurred that arose out of and in the course of petitioner's employment by respondent, (D) the date of accident, (F), and whether the petitioner's current condition of ill being is causally related to his accident, the Arbitrator hereby finds as follows:

The date of an accidental injury in a repetitive trauma compensation case is the date on which the injury manifests itself. *Peoria County Belwood Nursing Home v. Industrial Commission*, 115 Ill.2d 524, 505 N.E.2d 1026 (1987). The manifestation of a repetitive trauma injury occurs when the fact of injury and its causal relationship to the claimant's employment would have become plainly apparent to a reasonable person. *Durand v. Industrial Commission*, 224 Ill.2d 53, 862 N.E.2d 918 (2006).

As the First District Appellate Court has established, "The modern rule allows compensation even when an injury occurs at a time and place remote from the employment if its cause is something that occurs entirely within the time and place limits of employment." *A.C.& S. v. The Industrial Commission*, 710 N.E.2d 837, 840; 304 Ill. App. 3d 875, 879 (1st Dist. 1999). The Court went on to explain that Illinois Supreme Court has determined that the manifestation date is important in determining the relationship between the parties, but that the Supreme Court did "not intend to give employers an additional shield by requiring the injury to be traced to employment during employment." *Id* at 841, citing *Peoria County Belwood Nursing Home v. Industrial Commission*, 115 Ill.2d 524, 529; 505 N.E.2d 1026, 1028 (1987).

As detailed by the Appellate Court in *Zion-Benton Township High School District 126 v. The Industrial Commission*, 609 N.E.2d 974 ; 242 Ill. App. 3d 109 (2nd Dist. 1993), "Gradual injury stemming from repeated trauma clearly is compensable under the Workers' Compensation Act as long as the employee proves the injury is work-related and not the result of normal degenerative processes. He need not show any external violence to the body to prove an accidental injury, for compensation may be allowed whenever an employee's existing

physical structure, whatever it may be, gives way under the stress of his usual labor. The employee need only identify the date on which the injury manifested itself." *Id* at 978.

At trial on December 4, 2012, Petitioner testified that he first began to develop right hand while working for Respondent, performing tasks such as bending pipe, pulling wire and hand reaming pipes to remove burs from the their insides after cutting them. During the six months that Petitioner was employed by Respondent, he noticed pain in his right forearm and locking up in his right hand while reaming.

On December 9, 2011, Petitioner complained of right wrist pain when he first sought medical treatment with Dr. Serna. However, Petitioner's treatment at that time was focused on the pain in his abdomen, groin, and right hip. (PX 4).

On January 12, 2012, Petitioner was seen by Dr. Ghaly of Ghaly Neurological Associates. Petitioner informed Dr. Ghaly that he was having pain while performing fine motor tasks at work. Dr. Ghaly noted that Petitioner had possible carpal tunnel syndrome and had no history of trauma or injuries previously. (PX 3).

On January 23, 2012, Petitioner returned to Dr. Ghaly for an evaluation of the pain in his right hand. Petitioner explained to Dr. Ghaly that he did a lot of physical work with his right hand and it got weak sometimes with pain in the wrist and elbow. Dr. Ghaly diagnosed mild right-sided carpal tunnel syndrome and recommended use of a night splint and recommended that Petitioner undergo an EMG if the condition worsened. (PX 3).

Petitioner testified that the first time he connected his right hand symptoms to his work activities was when he was told he had carpal tunnel by Dr. Ghaly on January 23, 2012. No evidence or testimony has been submitted to rebut Petitioner's testimony regarding the first time he became aware of his carpal tunnel syndrome and its relation to work.

The Arbitrator finds that Petitioner sustained an accident that arose out of and in the course of his employment Respondent on January 23, 2012, the first time he was informed of his right-sided carpal tunnel syndrome by Dr. Ghaly. January 23, 2012 is the date that Petitioner's injury manifested itself, as Petitioner became aware of the injury and its causal relationship to work on that date. The Arbitrator finds that a reasonable person would similarly have known of their carpal tunnel injury and its relationship to their work activities after being so diagnosed.

Respondent in this matter further contends that Petitioner's claim should be denied because an employee-employer relationship did not exist between Petitioner and Respondent at the time of Petitioner's accident in this matter. Petitioner was laid off by Respondent on December 15, 2011, but claims an accident date of January 23, 2012 for a repetitive trauma carpal tunnel injury.

There is no dispute that Petitioner was employed by Respondent in November and December of 2011, when he testified that his symptoms first began. There is also no dispute that Petitioner was employed by Respondent while his right wrist symptoms worsened with the repetitive use of tools at the worksite. A review of the records and testimony in this case, demonstrate that Petitioner's injuries occurred during his employment by Respondent in November and December of 2011.

Therefore, the Arbitrator finds that an employee-employer relationship did exist between Petitioner and Respondent in this case. The date of the accident in this case, which is the date of manifestation for Petitioner's repetitive trauma injury, is a legal technicality. The fact that the manifestation date is after Petitioner left Respondent's employ does not shield Respondent against liability for Petitioner's accident and the injury sustained while working for Belec. Although the manifestation date is January 23, 2012, the development of Petitioner's repetitive motion injury is clearly related to the time period of his employment by Respondent.

Upon review of the records and testimony in this case, the Arbitrator further finds that Petitioner's current condition of ill-being in the right wrist is causally related to his January 23, 2012 work accident.

Whether a causal connection exists between an accident and a condition of ill being may be determined from both medical and non-medical evidence. *International Harvester v. Industrial Comm'n*, 93 Ill.2d 59, 442 N.E.2d 908 (1982). A chain of events demonstrating a prior condition of good health, an accident and a subsequent disabling condition of ill-being will suffice to establish a causal connection between the accident and the employee's injury. *Westinghouse Elec. Co. v. Industrial Comm'n*, 64 Ill.2d 244, 356 N.E.2d 28 (1976); *Plano Foundry Co. v. Industrial Comm'n*, 356 Ill. 186, 190 N.E.2d 255 (1934); *Phillips v. Industrial Comm'n*, 187 Ill.App.3d 704, 543 N.E.2d 946 (1989).

The evidence in this case reflects that Petitioner was working at full duty, with no limitations, when he began work for Respondent in July of 2011. Subsequently, after repetitive use of his right wrist in reaming pipe and performing other fine motor tasks at work, Petitioner developed pain in his right wrist and arm.

The Arbitrator finds that Petitioner's previous hand injuries, in 1990, 1996, and 2008 have no relevance to the case at bar. There is no evidence that Petitioner's previous hand injuries in any way effected his ability to work or contributed to Petitioner's carpal tunnel syndrome. The facts in evidence and the chain of events in this case clearly indicate a causal connection between Petitioner's right wrist injury and his job duties for Respondent.

On the issue of (E) whether timely notice was given by the petitioner to respondent, the Arbitrator hereby finds as follows:

Petitioner testified that after being diagnosed with carpal tunnel syndrome by Dr. Ghaly on January 23, 2012, he faxed notification of his injury and its relation to work to Respondent.

This fax was received by Roy Belluomini, Vice-President of Belec on January 23, 2012.

The fax states, "I am giving notice that on January 23, 2012 my doctor has diagnosed me with carpal tunnel syndrome in the right hand. I believe this was caused by my duties at work" and is signed from Harry Koerner. (PX 18).

There is no dispute that this notice was received by Respondent. The Arbitrator has reviewed all evidence and testimony in this matter and finds that Petitioner gave timely notice of his carpal tunnel injury to Respondent on January 23, 2012, pursuant to Section 6(c) of the Act.

On the issue of (G) petitioner's earnings, the Arbitrator finds as follows:

While working for Respondent, Petitioner worked eight hours per day, five days per week, or 40 hours per week. Petitioner further explained that if he worked 32 hours in a week, that would have been a four day work week, 37 hours would have been a five day work week, and 22 1/2 hours would have been a three day work week. From June through September of 2011, there was some lost time due to rain, which came through the ceilings of the building and flooded the floors. Petitioner also took off some personal days in October and November for duck and goose hunting. On cross-examination, Petitioner testified that he had probably missed five or six days from work with Respondent due to rain. The remainder of the days off would have been for Holidays or personal days.

Respondent's witness, Donald. Kelly testified that when it rained, he would give his guys the option to stay and work in the mud or to go home. He further stated that there would have been no weeks that Petitioner worked during which fewer than forty work hours would have been available to him.

Section 10 of the Act states, in relevant part, "Average weekly wage" which shall mean the actual earnings of the employee in the employment in which he was working at the time of the injury during the period of 52 weeks ... divided by the number of weeks and parts thereof remaining after the time so lost has been deducted. Where the employment prior to the injury extended over a period of less than 52 weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee actually earned wages shall be followed." 802 ILCS 305/10.

The Arbitrator has reviewed all records and testimony in this matter and has calculated Petitioner's average weekly wage as follows:

Period Ending	Gross	OT Premium	Hours	Days	Weeks	Wage
6/18/2011	$1,580.00	$0.00	40.00	5.00	1.00	$1,580.00
6/25/2011	$1,264.00	$0.00	32.00	4.00	0.80	$1,264.00
7/2/2011	$1,461.50	$0.00	37.00	5.00	1.00	$1,461.50
7/9/2011	$1,264.00	$0.00	32.00	4.00	0.80	$1,264.00
7/16/2011	$1,224.50	$0.00	31.00	4.00	0.80	$1,224.50
7/23/2011	$1,461.50	$0.00	37.00	5.00	1.00	$1,461.50
7/30/2011	$1,580.00	$0.00	40.00	5.00	1.00	$1,580.00
8/6/2011	$1,264.00	$0.00	32.00	4.00	0.80	$1,264.00
8/13/2011	$1,264.00	$0.00	32.00	4.00	0.80	$1,264.00
8/20/2011	$1,315.50	$0.00	34.00	4.00	0.80	$1,315.50
9/3/2011	$1,232.00	$0.00	32.00	4.00	0.80	$1,232.00
9/10/2011	$866.25	$0.00	22.50	3.00	0.60	$866.25
9/17/2011	$1,540.00	$0.00	40.00	5.00	1.00	$1,540.00
9/24/2011	$866.25	$0.00	22.50	3.00	0.60	$866.25
10/1/2011	$1,232.00	$0.00	32.00	4.00	0.80	$1,232.00
10/8/2011	$1,540.00	$0.00	40.00	5.00	1.00	$1,540.00
10/15/2011	$1,540.00	$0.00	40.00	5.00	1.00	$1,540.00
10/22/2011	$1,540.00	$0.00	40.00	5.00	1.00	$1,540.00
10/29/2011	$1,540.00	$0.00	40.00	5.00	1.00	$1,540.00
11/5/2011	$1,501.50	$0.00	39.00	5.00	1.00	$1,501.50
11/12/2011	$1,540.00	$0.00	40.00	5.00	1.00	$1,540.00
11/19/2011	$1,232.00	$0.00	32.00	4.00	0.80	$1,232.00
11/26/2011	$924.00	$0.00	24.00	3.00	0.60	$924.00
Totals	$30,773.00	$0.00	791.00	100.00	20.00	$30,773.00

The Arbitrator has reviewed the testimony on evidence submitted in this case and finds that Petitioner lost 15 days of work during the period he was employed Respondent. Of the 15 days, 6 days were rain outs and 4 days were Holidays (4th of July, Labor Day, and 2 days for Thanksgiving). Therefore, 10 of the days lost by

Petitioner were due to no fault of his own. The Arbitrator finds that Petitioner took 5 days off as personal days. The appropriate denominator for Petitioner's average weekly wage calculation, indicating the number of weeks and parts thereof worked by Petitioner, is 21 (100 days worked + 5 personal days taken off / 5 days in a normal work week).

Based upon the above reasoning, the Arbitrator calculated Petitioner's average weekly wage as follows:

$30,773.00 (earnings) / 21 (weeks and parts thereof worked) = $1,465.38 average weekly wage. The Arbitrator finds that Petitioner's average weekly wage, pursuant to Section 10 of the Act is $1,465.38.

On the issue of (J) payments for medical services, the Arbitrator finds as follows:

From a review of the records and bills, it is clear that the treatment sought and rendered focused primarily on Petitioner's lower back in every instance, except the January 23, 2012 appointment with Dr. Ghaly. The doctor notes in his January 23, 2012 record that Petitioner was being seen for possible carpal tunnel syndrome. Furthermore, Dr. Ghaly's January 23, 2012 bill notes carpal tunnel syndrome as a reason for the visit.

All lumbar treatment for Petitioner's consolidated case number 12 WC 01636 has been awarded or denied therein. For the instant case, the Arbitrator finds that Petitioner's January 23, 2012 appointment with Dr. Ghaly was for the diagnosis and treatment of his right wrist, which is the subject of this case. Respondent has offered no evidence or testimony to dispute the reasonableness or necessity of any of Petitioner's medical treatment.

Therefore, the arbitrator orders respondent to pay the reasonable medical services of $272.00, pursuant to Section 8(a) of the Act, which is the bill amount from Dr. Ghaly's January 23, 2012 treatment of Petitioner.

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Harry L. Koerner III,
Petitioner,

vs.

NO. 12 WC 01636

14IWCC0050

Belec Electric, Inc.,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by Respondent herein and notice given to all parties, the Commission, after considering, the issues of accident causal connection, temporary total disability, medical expenses, prospective medical expenses, jurisdiction, benefit rates, employer-employee relationship, notice and Petitioner exceeded two choices of physicians and being advised of the facts and law affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on March 28, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

14IWCC0050

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JAN 2 8 2014

Daniel R. Donohoo

Kevin W. Lamborn

Thomas J. Tyrrell

o-12/17/13
drd/wj
68

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

KOERNER, HARRY
Employee/Petitioner

Case# **12WC001636**

12WC002408

BELEC ELECTRICAL INC
Employer/Respondent

14IWCC0050

On 3/28/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0274 HORWITZ HORWITZ & ASSOC
MITCHELL HORWITZ
25 E WASHINGTON ST SUITE 900
CHICAGO, IL 60602

0210 GANAN & SHAPIRO PC
ELAINE NEWQUIST
210 W ILLINOIS ST
CHICAGO, IL 60654

STATE OF ILLINOIS)
)SS.
COUNTY OF Will)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Harry Koerner
Employee/Petitioner

v.

Belec Electrical, Inc.
Employer/Respondent

Case # **12** WC **1636**

Consolidated cases: **12 WC 2408**

14IWCC0050

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gregory Dollison**, Arbitrator of the Commission, in the cities of **Chicago and New Lenox, Illinois**, on **December 4, 2012 and December 19, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☒ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☒ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☒ What was the date of the accident?
E. ☒ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☒ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other **Section 8(a) choice of physicians**

FINDINGS

On the date of accident, **January 12, 2012**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **$80,009.80**; the average weekly wage was **$1,465.38**.

On the date of accident, Petitioner was **35** years of age, ***single*** with **1** dependent child.

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$0** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$0**.

Respondent is entitled to a credit of **$0** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $976.92/week for 48.29 weeks, commencing January 17, 2012 through December 19, 2012, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services of $324,439.77, as provided in Section 8(a) of the Act. Said

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

3/27/13
Date

ICArbDec19(b)

MAR 28 2013

Attachment to Arbitrator Decision
(12 WC 1636)

FINDINGS OF FACT

From June of 2011 through mid-December 2011, Petitioner, Harry Koerner, was employed as a journeyman inside wireman electrician by Respondent, Belec Electrical, Inc. (Belec). During that time, Petitioner was working on a construction site in Shorewood, Illinois, helping build an assisted living facility.

As an electrician, Petitioner works with various tools and materials, including conduit which ranges in size from half inch to three inches, as well as different types and sizes of wire. Petitioner testified that bundles containing ten sticks of conduit can range in weight from 30 to approximately 67 pounds. The wire that Petitioner worked with would come on rolls containing at least 2500 feet of wire, weighing 62 pounds.

Petitioner testified that while working for Respondent, he worked eight hours per day, five days per week, or 40 hours per week. Petitioner further explained that if he worked 32 hours in a week, that would have been a four day work week, 37 hours would have been a five day work week, and 22 1/2 hours would have been a three day work week. Petitioner stated that from June through September of 2011, there was some lost time due to rain, which came through the ceilings of the building and flooded the floors. Petitioner also took off some personal days in October and November for duck and goose hunting.

Petitioner testified that when he first began work for Belec in June of 2011, he was not having any difficulty with his lower back, right hip or right leg and was working at full duty. Petitioner noted that up until November of 2011, he was not experiencing any pain in his right hand, right groin or right hip. Meridian Medical records on November 7, 2011 indicate that Petitioner was suffering from a sinus infection but notes no other problems. (PX 4).

In November of 2011, Petitioner was working in the basement of the Shorewood building site for the Respondent. Petitioner provided that he was hanging racks for electrical conduit on the ceiling of the basement, then placing the conduit and pulling wires through the conduit for the basement lights. Petitioner was also installing outlets on the walls, stairwells and elevator pits.

Petitioner testified that in order to install the racks for conduit on the ceiling, he would climb a 10-12 foot ladder and use a 10-12 pound hammer drill to drill the anchors for the brackets into the ceiling. Petitioner indicated this work was performed while standing on a ladder with one arm overhead to reach the ceiling. Petitioner would first go up the ladder and drill a hole with the hammer drill. He would then come back down the ladder to get an anchor and go back up the ladder, drilling the anchor into the ceiling.

Petitioner explained that he would have to carry the conduit used in the basement from the first, second and third floors down to his basement work area. The first day that he was in the basement, he spent about half the day bringing conduit down. After that day, he would have to go upstairs and carry more conduit down each time that he ran out. The conduit carried to the basement would range from one half inch to one-and-a-quarter inches in diameter. The weights of the conduit bundles carried by Petitioner would range from 30-67 pounds. Petitioner indicated that he would cut and bend the conduit, then install it on the ceiling. Petitioner stated that bending pipe required that he place the pipe on the ground, holding one end down with his foot, and pull the other end up to bend it. Petitioner also had the option for some pipe to use the pipe bender, which allowed him to place the bender on the ground and push the pipe down over it.

Petitioner testified that after hanging the conduit on the ceiling, he hung the light fixtures. Petitioner then would pull the wire through the conduit to terminate it at the light fixtures. The wire used in this work was stored in a

lock box on the third floor of the building. Petitioner carried the rolls of wire from the third floor to the basement to use, then at the end of the day, carried the rolls back up to the third floor lock box.

Petitioner testified that he stopped working in the basement approximately two and a half weeks before he got laid off on December 15, 2011. During the final two and a half weeks of his employment, Petitioner put in light switches and performed other, lighter, "trim work" activities.

Petitioner testified that during the month of November and early December 2011, he began noticing that he was limping with his right leg. Petitioner stated that the limping began when he was pulling wire. Petitioner provided that he had been asked by his foreman, Don, to assist him in pulling a large cable for the roof. Don stood on a ladder while Petitioner pulled wires up to him. The wires being pulled at that time were large, heavy, aluminum wires that filled a three inch pipe. Petitioner stated that there was no specific episode that he recalls bringing on the limping. His limping slowly worsened as he continued to work.

Petitioner testified that he had developed right hand pain while bending pipe, pulling wire and hand reaming pipe with a hand reamer to remove burs from the inside of the pipe after each time that he cut it. Petitioner provided the reamer for the Arbitrator's inspection at hearing. The hand reamer is a screwdriver-like device that is used by holding the reamer in one hand and twisting the forearm while rotating the right wrist repetitively. Petitioner testified that he performed the hand reaming during the six months he worked for Respondent. He noticed pain in his right forearm and that his right hand would lock up.

Petitioner testified that on December 9, 2011, he began experiencing right groin and abdominal pain. As a result he sought medical treatment with Dr. Phillip Serna at Meridian Medical. Petitioner provided that as of December 9, 2011, he had been limping for about two weeks, but that the abdominal/groin pain had started that day. Dr. Serna's notes indicate that Petitioner was experiencing right hip joint, right abdominal, right wrist and right elbow pain. Petitioner was sent for right hip and right wrist x-rays, each of which came out normal.(PX 4)

Petitioner testified that when he returned to Respondent's job site on December 12, 2011, he spoke with his foreman, Don Kelly, the owner's son, R.J., and co-workers Tommy and Mark. Petitioner stated that he told that group of people that he had gone to the doctor on Friday, December 9, and that the doctor told him he pulled a muscle in his abdomen and that his right hip was hurting because he had been overcompensating for his injured muscle. Petitioner explained that he had previously feared that his abdominal pain was a sign of cancer, since his father had cancer that revealed itself with the same type of pain, and that is why he went to the doctor on December 9th.

Petitioner was laid off from the respondent on December 15, 2011.

On December 26, 2011, Petitioner was seen by Dr. Asad Cheema, a pain management specialist, who noted Petitioner's right hip and abdominal pain which was reported to be worsening. Dr. Cheema diagnosed severe osteoarthritis and placed Petitioner on pain medication. (PX 10)

On January 3, 2012, Petitioner submitted for a MRI of his right hip at Meridian Medical Associates. Petitioner followed up with Dr. Michael Murphey of Meridian Medical Associates on January 9, 2012. Dr. Murphy reviewed the MRI and noted that the previous x-rays and MRI were consistent with mild arthritis. Petitioner complained to Dr. Murphy of pain in the right hip and buttocks. Dr. Murphy diagnosed mild right hip arthritis and radiculopathy. (PX 4) Petitioner testified that as of his January 9, 2012 appointment date with Dr. Murphy, he did not think that his right hip pain was work-related. He did not know that he had a back injury at that time. Dr. Murphy wrote in his notes that he believed Petitioner should begin treatment for lumbar radiculopathy and have a MRI of his lumbar spine in conjunction with physical therapy. (PX 4).

On January 11, 2012, Petitioner began physical therapy treatment at Brightmore Physical Therapy. (PX 11).

On January 12, 2012, Petitioner underwent a MRI of the lumbar spine at Fox Valley Imaging. (PX 6). Following the MRI, Petitioner was seen by Dr. Ramsis Ghaly, a neurosurgeon, at Ghaly Neurological Associates. Dr. Ghaly noted Petitioner was frustrated because he did not know what was wrong with him. He noted Petitioner had been told that he had a hip problem, but had not been told what he had. Petitioner's main complaints were right groin pain and right buttock pain that went down to the hamstring, calf and side of the foot, marked by limping and dragging his leg. Dr. Ghaly noted the onset of Petitioner's pain while working in November of 2011 and its gradual worsening. He further noted possible carpal tunnel syndrome of Petitioner's right hand, as he was having pain while he was performing fine motor tasks at work. Petitioner was noted to have no history of trauma or injuries before. After examining Petitioner and reviewing his lumbar MRI, Dr. Ghaly diagnosed disc herniation and spondylosis at L4-5 and L5-S1 and grade 1 spondylolisthesis at L5-S1. Dr. Ghaly recommended either a microdiscectomy and removal of the herniated disc fragments at L4-5 or a laminectomy and fusion at L4-5 and L5-S1. Petitioner did not want to undergo surgery at that time and wanted to think about his options. (PX 3). Petitioner testified that this visit was the first time he found out that he had a lower back condition and realized that his injury was related to work activities at Belec.

Petitioner testified that after seeing Dr. Ghaly on January 12, 2012, he called Respondent on January 13, 2012 to report his work-related injuries. Petitioner testified that he spoke with "Ron" (who was later identified as Roy Belluomini, the Vice-President of Belec). Petitioner explained that he told Mr. Belluomini he had injured his back on the job at Alden Estates of Shorewood. Petitioner further testified that he called Respondent on January 13, 2012 because that was right after he learned that his injury was actually to his lower back. Prior to January 12, 2012, he believed that he may have had cancer or a hip injury, but he learned on January 12, 2012 that he actually had a back injury and he never connected his pain to his work until January 12th.

On January 16, 2012, Petitioner followed up with Dr. Ghaly. Dr. Ghaly again noted that Petitioner's pain began in November of 2011 and that he as walking fine with no problems prior to November of 2011. Dr. Ghaly further noted that Petitioner had a history of a pulled tendon in his right leg two years prior, but that he had gotten better from that and was having no problem performing his work prior to this injury. Dr. Ghaly recommended that Petitioner continue physical therapy and a steroid injection if his pain got too bad. Dr. Ghaly continued to recommend surgical intervention, which Petitioner did not want to pursue at that time. (PX 3).

On January 17, 2012, Petitioner was seen again by Dr. Serna. Dr. Serna stated that Petitioner wished to be seen by Dr. Cary Templin of Hinsdale Orthopedics. Dr. Serna recommended that the petitioner seek care with Dr. Templin or Dr. Ghaly. Dr. Serna further noted that Petitioner's condition arose out of his employment, pulling cable. (PX 4). On January 17, 2012, Petitioner also began physical therapy at ATI Physical Therapy. (PX 9).

On January 23, 2012, Petitioner followed up with Dr. Ghaly for an evaluation of pain in his right hand. Petitioner informed Dr. Ghaly that he did a lot of physical work with his right hand and it got weak sometimes, with pain in the wrist and up to the right elbow. Dr. Ghaly diagnosed mild carpal tunnel syndrome, L4-5 disc protrustion and L5-S1 grade I spondylolisthesis. Dr. Ghaly recommended a possible night splint and an EMG and nerve conduction study if the condition worsened. (PX 3).

After seeing Dr. Ghaly on January 23, 2012, Petitioner drafted and faxed a letter to Respondent informing them of his right hand injury. (PX 18). Petitioner explained that he was told by Dr. Ghaly for the first time on January 23, 2012 that he had carpal tunnel syndrome.

Petitioner continued to follow up with Dr. Cheema, Dr. Serna and physical therapy treatment through January, February and March of 2012.

On March 20, 2012, Petitioner was seen by Dr. Cary Templin. Petitioner testified that when he first saw Dr. Templin on March 20, 2012, he brought a job description of an inside wireman with him, which he had gotten from his union, Local 176. Petitioner gave Dr. Templin a history of problems beginning gradually with lifting, twisting bending and pulling at work. Dr. Templin diagnosed Petitioner with "a work related injury, aggravation of his preexisting spondylolisthesis and spondylolysis with a disc protrusion extending posterolaterally and into the foramen." Dr. Templin recommended L5 and S1 nerve root epidural injections and four weeks of continued physical therapy. If those did not resolve the pain, Dr. Templin recommended L5-S1 and potentially L4-5 fusion. Dr. Templin placed Petitioner on restrictions of no lifting greater than 10 pounds, limited bending, squatting and kneeling, and no overhead work. (PX 2).

Petitioner underwent L5-S1 transforaminal epidural steroid injections, performed by Dr. Samir Sharma at the Pain & Spine Institute, on April 4, 2012 and April 18, 2012. (PX 7). Petitioner also continued physical therapy at ATI Physical Therapy during that time. (PX 9).

On April 24, 2012, Petitioner followed up with Dr. Templin who noted that Petitioner's pain had improved somewhat with injections, but that he continued to have significant back and buttock pain, with some parethesias in the right leg. Dr. Templin recommended that Petitioner undergo L4-5 and L5-S1 fusion surgery. Dr. Templin placed Petitioner on restrictions of no lifting greater than 10 pounds, limited bending, squatting and kneeling, and no overhead work. Dr. Templin also drafted correspondence on April 24, 2012 in which he stated, "I do feel as though his duties as a journeyman inside wireman do have a causal relationship as the patient noted worsening of his condition. It is highly likely that the spondylolisthesis and spondylolysis at the L5 level predated these findings but were certainly aggravated during his duties as a journeyman inside wireman." (PX 2).

Petitioner continued to follow up with Dr. Sharma, Dr. Templin, and Dr. Serna through July of 2012.

On July 23, 2012, Petitioner underwent a L4-5 lateral interbody fusion, L5-S1 transforaminal lumbar interbody fusion and L5-S1 posterior lumbar fusion, with cage and instrumentation. This surgery was performed by Dr. Templin at the Center for Minimally Invasive Surgery. Dr. Templin's post-operative diagnosis was L5-S1 spondylolisthesis, L4-5 degenerative disc and L5 radiculopathy. (PX 8). Petitioner testified that following the July 23, 2012 surgery, his leg and hip pain went away and that he had only lower back pain from the surgery itself.

Following surgery, Petitioner was treated from July 24, 2012 through July 28, 2012 for a retroperitoneal hematoma at Provena St. Joseph Medical Center. (PX 13).

On September 10, 2012, Petitioner followed up with Dr. Templin who recommended that Petitioner begin physical therapy. Petitioner was kept on an off-work status. (PX 2).

Petitioner began physical therapy at ATI Physical Therapy on September 19, 2012. (PX 9).
On October 22, 2012, Petitioner was seen again by Dr. Templin, who noted that Petitioner was doing well and should continue physical therapy. Petitioner had continued pain in the lower back but none extending into the legs, with no weakness or numbness. Petitioner was placed on a 5-10 pound lifting restriction, with limited bending, squatting and kneeling and no overhead activities. (PX 2).

As of the date of hearing, Petitioner was continuing treatment with ATI Physical Therapy and had recently been referred by Dr. Templin to work conditioning. Petitioner testified that his back was still sore and weak from the surgery. He also felt that his core muscles were weak from the surgery and from compensating for his back. Petitioner was taking Oxycontin and Percocet for his pain.

On cross-examination, Petitioner testified that he had probably missed five or six days from work with Respondent due to rain. The remainder of the days off would have been for Holidays or personal days.

Petitioner denied that he had been seen for low back and hip pain in 1987 when he was ten years old. Petitioner did have three previous injuries to his right hand including a fracture in 1990, a broken knuckle in 1996 and a fracture in 2008. Petitioner did not recall any previous treatment for lower back pain in 2005. Petitioner did recall seeing Dr. Serna in 2008 with pain that he described as inside his right thigh, diagnosed as a pulled tendon. The petitioner did not miss any work because of the 2008 leg injury. Finally, Petitioner testified that he sustained a low back injury in July of 2009 after lifting a 45 pound block at work. Petitioner did not recall ever having been seen by a doctor for back pain.

Petitioner testified that when he first began working at the Shorewood construction location, there were only outside walls of the building and floors, with no stairs and no elevator. Petitioner indicated that he would have to climb from floor to floor on an extension ladder, carrying his tools and materials with him. He provided that this was the condition of the building from approximately June through August of 2011.

Petitioner testified that he first worked on the second floor of the building, then the third floor, then moved to the basement. While working on the second and third floors, he was wiring the individual rooms and common areas. During the first three months of work, while working on the second and third floors, he did not experience any problems or pain. Petitioner also provided that while working in the individual rooms, some of the work was on the ceilings and some would be on the walls.

Petitioner explained that the conduit used at the Shorewood site would come in 10 foot lengths and each piece would be cut with a handsaw. It took less than a minute to cut through one piece. After cutting the conduit, he would hand ream each piece, then place and tighten fittings onto it. Petitioner indicated that he could finish the conduit portion of each individual room on the second and third floors in approximately eight hours. He would then help stock supplies into rooms that other people were working in.

Petitioner testified that in addition to the conduit and light fixtures on the ceilings, he would install switches at about waist height and outlets, at about 16 inches off the ground, into each room. Petitioner testified that this job was the most commercial work he had ever done and the most conduit that he had ever put up on a job. He indicated however, the basic act of pulling wire through the conduit was about the same as other jobs.

Petitioner testified that by September of 2011, stairs had been installed in the Shorewood building. At that time, he moved from individual rooms into the common areas of the building. At that time he was not experiencing any symptoms in September of 2011. Petitioner also worked in the common areas in October of 2011, moving down into the basement in November of 2011.
When asked whether he had ever discussed performing side jobs with R.J. or Don Kelly, Petitioner denied that he had done any side jobs while he was working for Respondent. Petitioner admitted that he had done side jobs in the past, but none while he was working for Respondent. Petitioner indicated that he had not worked a side job since 2006-2007.

Petitioner testified that he first began feeling some pain in his hip during the last two weeks of November 2011, which lead to a limp. Petitioner explained that when he first went to Dr. Serna on December 9, 2011, he told him that his right side abdomen was hurting and that he had a little limp in his right leg, but he didn't think anything of the hip pain because he thought it was from arthritis. He also complained of pain in his right arm. Petitioner further testified that although he thought the right hip pain he had on December 9, 2011 was just from arthritis and that the right arm pain might have been arthritis as well, but he did not know what was wrong.

Petitioner testified that when he returned to work on December 12, he began doing lighter work because Don knew he was hurting after Petitioner told him when he came back. Petitioner indicated that he was doing lighter duty work for the last two weeks prior to his December 15, 2011 lay-off to finish the job up.

Petitioner testified that after being laid off, he received two weeks of unemployment benefits before he was informed that he could not receive unemployment benefits while he was unable to work. Petitioner also signed on the union book looking for work from the day after he was laid off until the date he was told that his back was injured, on January 12, 2012.

On re-direct examination, Petitioner again stated that this job was the most commercial work he has ever done. His work in the basement of the respondent's building site was also the most he had ever used a hammer drill.

On re-cross examination, Petitioner explained that he connected the back injury to work after being informed of the injury by Dr. Ghaly because work for Respondent was the only place that he did repetitive heavy lifting and bending. Petitioner stated that he had not done that same type of work for other companies, working with a hammer drill over his head or carrying 2500-foot spools of wire. It was the hardest he had ever worked at a commercial job.

Testimony of Mark Colmane

In 2011, Mark Colmane was employed as an electrician with Respondent, Belec Electrical, Inc., through Local 176. He was called as a witness for Petitioner. Mr. Colmane has been a carpenter for 21 years and worked for Respondent for approximately four months. Mr. Colmane knew Petitioner only as a co-worker and does not know him outside of the jobsite.

Mr. Colmane testified that he had the opportunity to see Petitioner perform his job duties in November of 2011. Mr. Colmane saw Petitioner working in the basement of the Shorewood building during that time. He saw Petitioner running conduit on the ceiling of the basement. Mr. Colmane also confirmed that there were 2500-foot spools of wire on the job site, which he stated weighed between 50 and 70 pounds. Mr. Colmane did not witness Petitioner lifting the spools of wire, but stated that he was sure Petitioner did because he did witness Petitioner pulling the wire in the basement.

Mr. Colmane further explained to move conduit, you throw it over your shoulder and carry it to the area that you would install it in. He did see Petitioner carry bundles of conduit down to the basement. Mr. Colmane further confirmed that he saw Petitioner working on a ladder in the basement, using a hammer drill to drill through concrete.

Mr. Colmane testified that during the month of November, he noticed Petitioner was "limping, that he was walking a little differently." Mr. Colmane indicated that he did not ask Petitioner about his limp at that time and had not noticed Petitioner limping prior to November of 2011.

On cross-examination, Mr. Colmane testified that this was a normal type of commercial job.

Mr. Colmane provided that Petitioner was already on the job site when he began working for Respondent at the end of July or beginning of August, 2011. He indicated that the two did not really work together, but would work in the same portions of the building sometimes. He would see Petitioner for minutes at a time on a regular day. Mr. Colmane indicated that he was pulling phone cables that had to go through the basement, so he saw Petitioner working in the basement while he was down there as well. He witnessed Petitioner cutting conduit,

bending conduit, working on a ladder, and working on floor level, but most of the work was on the ladder to install conduit and light fixtures in the concrete ceiling.

Testimony of Donald Kelly

Donald Kelly is an employee of Respondent, Belec Electrical, Inc., and has been employed by Respondent for 20 years. He was called as a witness for Respondent. Mr. Kelly is employed as a foreman, a position that he has been in for about 15 years for Respondent. Prior to becoming a foreman, Mr. Kelly performed journeyman electrical work.

Between June and December of 2011, Mr. Kelly was working as a foreman at the Shorewood construction site. Mr. Kelly saw Petitioner every day during the time Petitioner worked at the site. Some days he worked with Petitioner directly and some days he simply performed spot checks to see how Petitioner was doing.

Mr. Kelley testified that when Petitioner joined the job in June of 2011, the exterior walls of the building were up and the floors were poured but the brickwork was not complete, there were not stairs or elevators, and the roof was not watertight. He provided that when it rained, he would give his guys the option to stay and work in the mud or to go home. He further stated that there would have been no weeks that Petitioner worked during which fewer than forty work hours would have been available to him.

Mr. Kelly testified that in June of 2011, Petitioner's job duties involved "rough-in work," which entailed passing conduit and wire through the walls to wire electrical boxes and connecting the wires to boxes at switches and outlets. Petitioner was working in individual rooms performing these tasks and he would use a ladder when installing boxes and conduit in the ceiling. The other work could be reached from the floor.

Mr. Kelly testified that in the individual rooms, three-quarter inch conduit was used, which would be cut to size prior to installation. The conduit would also be bent to fit its place. This was performed with a horseshoe-shaped pipe bender. The person bending the pipe would stand on the back of the pipe and apply pressure to hold the pipe in place, then push down on the handle of the bender. This task could be done by either pulling up or pushing down the handle, at the user's choice.

Mr. Kelly testified that materials were brought to the upper floors of the building using a lull, which is a very large forklift, from outside the building. This is how approximately 80 percent of the conduit reached the upper floors.

Mr. Kelly testified that during the first three months Petitioner was employed with Respondent, he did not notice Petitioner having any difficulty or complaining of anything. Mr. Kelly however testified that he did notice that Petitioner would "wobble when he walked" but did not notice him favoring either side.

Mr. Kelly further explained that the process of pulling wire involved passing a fish tape, which is a long piece of flexible metal, through the conduit, then pulling the fish tape through from the other side to retrieve the wire attached to it. The wire would be placed on a wire-cart, which allowed the roll to rotate as the wire was fed through.

Mr. Kelly confirmed that Petitioner began work in the basement in November. He recalled Petitioner working in the basement for about two weeks. When asked what Petitioner's job duties in the basement were, Mr. Kelly testified, "pretty much what he said." He also explained that the lull (large forklift) would not reach the basement, so the pipe and other materials had to be carried down there. Mr. Kelly confirmed that Petitioner was working off a ladder, attaching a rack on the concrete ceiling for conduit to run across. This was overhead

work. Petitioner would use a drill, which Mr. Kelly stated was 10.1 pounds. According to Mr. Kelly, Petitioner would make a lot of trips up and down the ladder, but would work overhead drilling for approximately 30 seconds at a time.

When asked whether Petitioner reported any problems to him in November of 2011, Mr. Kelly testified "We talked. He may have mentioned that he had an ailment or a pain" but stated that he did not specifically say that he injured himself working. Mr. Kelly did recall Petitioner speaking with him about "stomach issues" on Monday, December 12, 2011, but didn't remember the specifics of his complaints. He indicated Petitioner never asked to be taken off of the job he was working on and always completed his tasks.

Mr. Kelly testified that Petitioner told him of a small, residential side job he had been working on in the City of Chicago, using similar tools and doing similar work to what they were doing on the job site. Also Mr. Kelly did not notice anything unusual or different about Petitioner in the last two weeks of the job, prior to Petitioner's layoff.

On cross-examination, Mr. Kelly agreed that Petitioner would need to work in a rapid, workmanlike fashion on the job site. Mr. Kelly also heard Petitioner's testimony as he sat in the room while Petitioner testified. When asked if he agreed with most of what Petitioner said, Mr. Kelly stated, "I believe so, yes."

Testimony of Roy Belluomini

Roy Belluomini is the vice-president of Belec Electric and is the supervising electrician. His job duties include going over job quotes, obtaining jobs, ordering material and visiting jobsites. Mr. Belluomini testified that the only notice he got of Petitioner's hand and back injuries was when he received the applications for adjustment of claim in the mail.

Mr. Belluomini testified that Petitioner never personally gave him notice of a lower back injury. He further stated that he was never advised of any problems or difficulties that Petitioner was having during his employment period with Respondent.

Mr. Belluomini went on to testify that he received a call in the middle of January from Petitioner to report an injury. Mr. Belluomini explained that when Petitioner called him, he told him that his name was Harry and that he worked for Respondent at Shorewood. He stated that Petitioner explained he was from Local 176 and that he may have hurt himself on the job. He stated that this was a short, 35 second, call. Mr. Belluomini does not recall that Petitioner told him what body part or parts he injured, but thinks that he said something about his hand. He stated that he did not ask Petitioner any questions and that Petitioner quickly hung up.

Mr. Belluomini testified that a week after the phone call, he received a "one-sentence letter" that was "hand written on a piece of note paper" stating that Petitioner had worked on Respondent's job site and had injured himself. Mr. Belluomini stated that it did not go into any further details.

On cross-examination, Mr. Belluomini agreed that the phone call he got from Petitioner would have been on January 13, 2012. Mr. Belluomini testified that he was told by Petitioner that he had injured himself on the job, after which Mr. Belluomini claims that he called his workers' compensation insurance company and filled out any paperwork. Mr. Belluomini stated that he was not aware that Petitioner was diagnosed with carpal tunnel syndrome on January 23, 2012 or that he was diagnosed with two herniated discs on January 12, 2012.

Testimony of Roy Gino Belluomini

Roy Gino Belluomini (Roy) is an electrician who has been employed by Respondent, Belec Electric, for eight years. Roy worked at the Shorewood site from December of 2010 through the end of the project in December of 2011, with some time off in the summer of 2011.

Roy worked with Petitioner on a few occasions at Shorewood. He worked some with Petitioner performing layouts and piping in the hallways. Roy testified that Petitioner told him about doing some side jobs in downtown Chicago. Roy stated that Petitioner's side jobs included work on rooftop air conditioning units. He believed that Petitioner had told him about working a side job the weekend before their conversation in November of 2011. He indicated that an air conditioner job would involve bending conduit using a hydraulic bender and working with heavier wire. Roy further testified that Petitioner "had a kind of swagger" when he walked.

On cross-examination, Roy agreed that a large air conditioning wire job in downtown Chicago would usually be a union job through Local 134. Roy had no information as to what job, if any, Petitioner was actually working on.

On rebuttal, Petitioner testified that he had never been told before that he had a swagger or a waddle, as Mr. Kelly and Roy testified to. Petitioner also denied that he had ever discussed working a side job and denied that he had performed a side job in the City of Chicago in November of 2011. Petitioner further testified that when he called Mr. Belluomini on January 13, 2012 it was to report a back injury, not a hand injury. Petitioner pointed out that he was not diagnosed with carpal tunnel in his right hand until one week after that conversation, on January 23, 2012, by Dr. Ghaly.

Medical Opinions

On December 14, 2012, Dr. Templin drafted a narrative report detailing his opinions of Petitioner's condition and its cause. The doctor's opinion was based upon his treatment of Petitioner and his review of the treatment records from other providers. At that time, Dr. Templin had the opportunity to review a job description, provided by Petitioner's attorneys. (PX 19). Dr. Templin opined as follows:

"Mr. Koerner's onset of pain in November and December appears rather straight forward as initially pain extending to the hip and buttock and then pain that eventually started extending down his left with continued activities of daily work. He noted to me that the pain was a result of repetitive activities with severe pain in early December. He saw his doctor on December 9, 2011 for right hip pain, which in hindsight was most likely related to his lumbar herniated discs, degeneration and spondylolisthesis

1. Can a herniated disk result from repetitive work activities?

Absolutely. Repetitive work activities as Mr. Koerner was doing in November or December, including lifting, twisting, bending, hoisting heavy weight overshoulder, and climbing up and down ladders can certainly result in a herniated disk especially in the face of a preexisting degenerative condition as well.

2. Can aggravation of his preexisting spondylolisthesis and spondylosis result from repetitive work activities?

Absolutely. In regards to the spondylolisthesis and spondylosis, certainly this is a condition of instability of the lumbar spine and certainly repetitive activities of this nature can lead to aggravation of the foraminal stenosis or to the mechanical nature, the pain causing increasing pain and discomfort.

3. What is your current diagnosis of Mr. Koerner's condition?

My Current diagnosis is lumbar degenerative disk disease, herniated disk, L4-5, L5-S1 spondylolisthesis, degenerative disease and foraminal stenosis with radiculopathy, status post a L4-5, L5-S1 fusion.

4. After reviewing his job, give an opinion to within a reasonable degree of medical and surgical certainty whether Mr. Koerner's current condition of ill being is causally related to his repetitive work activities in 2011.

I do feel that it is with a reasonable degree of medical and surgical certainty that it is more likely than not that his repetitive work activities did play a role in his current condition of ill being with a right-sided herniated disk and aggravation of his spondylolisthesis. Therefor I do feel that his condition of ill being is causally related to these work activities with symptoms starting in November 2011 and early December 2011. The symptoms were right hip pain and groin pain, and abdominal pain. These symptoms it was determined were related to a lumbar condition on January 12, 2012 by Dr. Ghaly, the neurosurgeon that examined him and read a lumbar MRI at that time.

5. Do you have an opinion relative to whether the above related repetitive work activity could or might have aggravate or exacerbated a preexisting condition of this patient, thereby being a cause of his current condition?

Yes, I do feel that it is more likely than not that his repetitive work activities did aggravate his preexisting condition resulting in a disk herniation at L4-5 as well as an aggravation of his spondylolisthesis at L5-S1, causing him significant lower back pain and more significantly, the radiating right leg pain that the patient had. It is well-documented that activities of repetitive lifting, bending, and twisting can aggravate degenerative conditions and can lead to disk herniation which can lead to the conditions that Mr. Koerner unfortunately has suffered from.

6. What treatment have you rendered previously and what treatment do you currently recommend for Mr. Koerner?

Mr. Koerner has undergone an L4-5 and LS-Sl fusion procedure. He has continued to progress well. My current treatment recommendation is to continue with physical therapy and progress to work conditioning and eventually a Functional Capacity Evaluation, which will hopefully place him at his previous work demand.

7. Do have an opinion whether the need for that treatment, including the spinal fusion, is causally related to Mr. Koerner's work activity?

I do, in regards to my previous answers. I feel that his condition of ill being is causally related and certainly the surgery was performed in order to help with those conditions noted above. Therefore, I feel that his spinal fusion and decompressive surgery is causally related to his repetitive work activities performed in November 2011 and early December, 2011.

8. Has all treatment that you have reviewed or administered to date been reasonable and necessary to treat Mr. Koerner's condition of ill being?

Certainly all treatment rendered to this date by myself as well as his other treaters have been reasonable and necessary. The patient and I discussed at length his options for surgery including potentially decompressive surgery. As well we had failed conservative measures in the form of injections and therapy. The patient has elected to proceed with surgical intervention as a result of his condition of ill being."

9. What current physical restrictions do you recommend for Mr. Koerner?

Currently I would have Mr. Koerner lift no more than 25 pounds and bend and twist to comfort. He should perform no overhead activities and should not be up on a ladder at this point in time. Currently I have him off of work as he continues his rehabilitation with physical therapy and work conditioning and therefore I have placed him on complete restriction from work at this point in time as he continues to perform his rehabilitation.

10. Do you have an opinion whether the current physical restrictions, if any, for Mr. Koerner are causally related to the repetitive work from 2011?

Yes, I feel that his current physical restrictions are directly related to the surgery which is causally related to the repetitive work activities of November and December, 2011, as noted above."

At Respondent's request Dr. Butler performed a records review on December 12, 2012. Dr. Butler opined that Petitioner had a preexisting condition which could have become symptomatic absent any specific work place exposure. Dr. Butler stated that Petitioner's "obesity (BMI of 36), preexisting spondylolisthesis, smoking history of 1.5-2ppd and poor fitness level contribute to the possibility of pain developing." Dr. Butler further stated that Petitioner's initial treatment with his primary care physician contained no note of a work related injury. Finally, Dr. Butler opined that Petitioner may be embellishing his workplace exposure, based upon his "historical recollection to treaters and the timing of complaints." Dr. Butler concluded that Petitioner's condition was unrelated to work. (RX 5).

On the issue of (A) whether the respondent was acting under and subject to the Illinois Workers' Compensation Act, the Arbitrator hereby finds as follows:

Section 3 of the Illinois Workers' Compensation Act states in relevant part, "The provisions of this Act hereinafter following shall apply automatically ... to all employers and all their employees, engaged in any department of the following enterprises or businesses which are declared to be extra hazardous, namely ... Construction, excavating or electrical work." 805 ILCS 305/3(3).

Petitioner in this matter was employed by Respondent as a journeyman electrician out of Local 176. While working for Respondent at the Shorewood construction site, Petitioner performed various aspects of electrical work, such as running conduit, pulling wires and connecting/terminating wires at electrical boxes.

Based upon Petitioner's credible testimony regarding his performance of electrical work while employed by Respondent, the Arbitrator finds that Belec Electrical, Inc., for whom such electrical work was performed, was operating under and subject to the Illinois Workers' Compensation Act, pursuant to Section 3(3) of the Act.

On the issues of (B) whether an employee-employer relationship existed between the petitioner and the respondent, (C) whether an accident occurred that arose out of and in the course of petitioner's employment by respondent, (D) the date of accident, (F), and whether the petitioner's current condition of ill being is causally related to his accident, the Arbitrator hereby finds as follows:

The original Application for Adjustment of Claim submitted in this case contained an accident date of December 1, 2011.

The date of an accidental injury in a repetitive trauma compensation case is the date on which the injury manifests itself. *Peoria County Belwood Nursing Home v. Industrial Commission*, 115 Ill.2d 524, 505 N.E.2d 1026 (1987). The manifestation of a repetitive trauma injury occurs when the fact of injury and its causal

relationship to the claimant's employment would have become plainly apparent to a reasonable person. *Durand v. Industrial Commission*, 224 Ill.2d 53, 862 N.E.2d 918 (2006).

As the First District Appellate Court has established, "The modern rule allows compensation even when an injury occurs at a time and place remote from the employment if its cause is something that occurs entirely within the time and place limits of employment." *A.C.& S. v. The Industrial Commission*, 710 N.E.2d 837, 840; 304 Ill. App. 3d 875, 879 (1st Dist. 1999). The Court went on to explain that Illinois Supreme Court has determined that the manifestation date is important in determining the relationship between the parties, but that the Supreme Court did "not intend to give employers an additional shield by requiring the injury to be traced to employment during employment." *Id* at 841, citing *Peoria County Belwood Nursing Home v. Industrial Commission*, 115 Ill.2d 524, 529; 505 N.E.2d 1026, 1028 (1987).

As detailed by the Appellate Court in *Zion-Benton Township High School District 126 v. The Industrial Commission*, 609 N.E.2d 974 ; 242 Ill. App. 3d 109 (2nd Dist. 1993), "Gradual injury stemming from repeated trauma clearly is compensable under the Workers' Compensation Act as long as the employee proves the injury is work-related and not the result of normal degenerative processes. He need not show any external violence to the body to prove an accidental injury, for compensation may be allowed whenever an employee's existing physical structure, whatever it may be, gives way under the stress of his usual labor. The employee need only identify the date on which the injury manifested itself." *Id* at 978.

The courts in Illinois have found repetitive work activities can be a cause of lower back injuries. In *Zion-Benton Township*, the Appellate Court found that repeatedly unloading boxes and 55-gallon drums of maintenance supplies from a truck led to a "breakdown of the [petitioner's] physical structure" and caused a lumbar injury, requiring fusion surgery. 609 N.E.2d at 978-979. The Second District Appellate Court again found a repetitive trauma back injury where the degenerative disc disease in the petitioner's lumbar spine was caused or aggravated by the vibrations involved in driving an autohauler. *Cassens Transport Company, Inc. v. The Industrial Commission*, 633 N.E.2d 1344, 262 Ill. App. 3d 324 (2nd Dist. 1994). Similarly, the First District Appellate Court in *Reliance Elevator Company v. The Industrial Commission*, 524 N.E.2d 1022; 171 Ill. App. 3d 18 (1st Dist. 1988) found that a job which included heavy lifting "from time to time" was causally related to an aggravation of Petitioner's lumbar disc protrusion where Petitioner had returned to work from a lumbar injury which occurred approximately seven months prior and worked for nearly two months with no medical care, missing no time from work, and where medical testimony supported that the petitioner's lifting duties were the most likely cause of their present condition and the probable cause of their disability. *Id* at 1025.

Petitioner testified that he began experiencing pain in his right hip and difficulty walking in November of 2011, but was not aware that he had sustained an injury to his lower back until January 12, 2012 when he was diagnosed with two herniated discs by Dr. Ghaly. Prior to seeing Dr. Ghaly, Petitioner had been treated for stomach and groin pain by Dr. Serna, which Petitioner first feared was cancer and then thought was simply right hip pain caused by overcompensating for a pulled stomach muscle. Petitioner then treated with Dr. Cheema and Dr. Murphy, who each treated Petitioner for right hip pain.

When Petitioner saw Dr. Ghaly on January 12, 2012, Dr. Ghaly noted that Petitioner was frustrated because he had been receiving treatment for an apparent hip injury, but nobody had been able to tell him what was actually wrong with him. Dr. Murphy had suspected radiculopathy and ordered a lumbar MRI. Dr. Ghaly was the first to review the MRI of Petitioner's lumbar spine and properly diagnose his condition. After being diagnosed by Dr. Ghaly, Petitioner informed the doctor that he knew his back injury was related to work, because that is the only place he did repetitive, heavy lifting. After reviewing Petitioner's medical records, Dr. Templin also confirmed that the first physician to explain the cause of Petitioner's groin and abdominal pain was Dr. Ghaly on January 12, 2012.

Based upon Petitioner's testimony regarding when he first became aware of his injury and its relation to work, Petitioner motioned for leave to amend the Application for Adjustment of Claim on case number 12 WC 01636 to reflect an accident date of January 12, 2012. The arbitrator, after reviewing the precedent established by the Illinois Supreme Court in *McLean Trucking Co. v. Industrial Comm'n*, 96 Ill. 2d 213, 449 N.E.2d 832 (1983), which stands for the proposition that the date of accident can be changed on an application for adjustment of claim to conform to the proofs contained in the record, granted Petitioner leave to amend the date of accident.

On the issue of whether Petitioner suffered a lower back injury due to repetitive work activities during his employment with Respondent, the Arbitrator finds that he did suffer the lower back injury while employed by Belec, even though he was not aware that it was related to his work duties while he was still working for respondent. This is based upon his symptoms of groin pain, abdominal pain and limping that he experienced while performing the repetitive activities of his job as an electrician. Dr. Templin's explanation of the repetitive trauma lower back injury is most persuasive and explains its insidious onset.

The next question is when the injury manifested itself, or when the fact of injury and its causal relationship to the claimant's employment would have become plainly apparent to a reasonable person. The Arbitrator finds it quite reasonable that a person in Petitioner's situation, who had experienced abdominal, groin pain and hip pain would think that he had a hip or stomach injury, not knowing that it was actually a lower back condition that caused his pain. Even at the time Petitioner was diagnosed with a lumbar injury, he testified that he was experiencing only right hip pain. In this case, the Arbitrator finds that the repetitive trauma injury to Petitioner's lumbar spine would not have become plainly apparent to a reasonable person until January 12, 2012 when Dr. Ghaly first diagnosed lumbar disc herniations and explained that Petitioner's hip pain was radicular in nature from his lumbar injury. This discovery was confirmed by Dr. Templin as being on January 12, 2012.

Based upon the evidence and testimony in this matter, the Arbitrator finds that Petitioner did sustain an accident that arose out of an in the course of Petitioner's employment by Respondent on January 12, 2012. This date of January 12, 2012 is the date on which the condition manifested itself, thus it is the date of accident for this repetitive work activity lower back injury.

Respondent in this matter further contends that Petitioner's claim should be denied because an employee-employer relationship did not exist between Petitioner and Respondent at the time of Petitioner's accident in this matter. Petitioner was laid off by Respondent on December 15, 2011, but claims an accident date of January 12, 2012 for a repetitive work activity back injury.

There is no dispute that Petitioner was employed by Respondent in November and December of 2011, when he testified that his symptoms first began. There is also no dispute that Petitioner was employed by Respondent while his hip symptoms worsened up through December 9, 2011 when he saw Dr. Serna, complaining of hip, abdominal and right arm pain. It is clear from a review of the records and testimony in this case, that Petitioner's injuries occurred during his employment with Respondent in November and December of 2011. Therefore, the Arbitrator finds that an employee-employer relationship did exist between Petitioner and Respondent during the time the symptoms began.

The date of the accident in this case, which is the date of manifestation for Petitioner's repetitive work activity injury, is a legal technicality. The fact that the manifestation date is after Petitioner had left Respondent's employment does not shield Respondent against liability for Ptitioner's accident and injury sustained while working for Belec. Although the manifestation date is January 12, 2012, the development of Petitioner's repetitive work activity injury clearly related to the time period of his employment by Respondent.

Regarding the causal connection between Petitioner's accident and his current condition of ill being, Petitioner began his treatment with Dr. Serna at Meridan Medical Associates. On January 17, 2012, Dr. Serna opined that

Petitioner's lower back condition arose out of his work pulling cable and referred Petitioner for care with Dr. Cary Templin.

Petitioner began treatment with Dr. Templin on March 20, 2012. At that time, Dr. Templin had the opportunity to review a job description for a journeyman electrician, provided by Petitioner. On April 24, 2012, after examining Petitioner, Dr. Templin opined "I do feel as though his duties as a journeyman inside wireman do have a causal relationship as the patient noted worsening of his condition. It is highly likely that the spondylisthesis and spondylolysis at the L5 level predated these findings but were certainly aggravated during his duties as a journeyman inside wireman."

After reviewing all medical records and testimony in this case, the Arbitrator finds the causation opinion of Dr. Templin more persuasive than the opinion of Dr. Butler. Dr. Templin has been treating Petitioner since March 20, 2012, performed the surgery on Petitioner's lumbar spine on July 23, 2012 and has had the opportunity to review Petitioner's medical treatment from other providers. In contrast, Dr. Butler performed only a records review and has never seen Petitioner. Furthermore, Dr. Templin examined a thorough job description which correlates well to the job descriptions testified to by Petitioner, Mr. Kelly and Mr. Colmane. There is no indication that Dr. Butler has reviewed any job description. Additionally, Dr. Templin clearly opines that Petitioner's conditions of spondylisthesis and spondylolysis at the L5 level predated Petitioner's accident, but that Petitioner's work duties aggravated those conditions. Dr. Butler failed to address the possibility of an aggravation or acceleration of Petitioner's preexisting condition. Finally, Dr. Butler makes an accusation that Petitioner may be embellishing his workplace exposure. However, Dr. Butler does not explain his reasoning in any detail and the Arbitrator notes that no other physician involved in Petitioner's care has indicated any thought of embellishment by Petitioner.

In his December 14, 2012 report, Dr. Templin opines "I do feel that it is with a reasonable degree of medical and surgical certainty that it is more likely than not that his repetitive work activities did play a role in his current condition of ill being with a right-sided herniated disk and aggravation of his spondylolisthesis. Therefore I do feel that his condition of ill being is causally related to these repetitive work activities in with symptoms starting in November 2011 and early December 2011. The symptoms were right hip pain, and groin pain, and abdominal pain. These symptoms it was determined were be related to a lumbar condition on January 12, 2012 by Dr. Ghaly, the neurosurgeon that examined him and read a lumbar MRI at that time."

The evidence in this matter reflects that prior to November of 2011, Petitioner was working at full duty as a journeyman inside wireman and was not experiencing any lower back or hip pain. Petitioner testified that he began to limp due to right hip pain in November of 2011, which was confirmed through the testimony of Mr. Colmane. The Arbitrator notes that although Respondent's witnesses testified that Petitioner had a "swagger" or "waddle," there is nothing in Petitioner's medical history to indicate that he would have an abnormal gait, absent injury. Lastly, although Respondent has offered medical records regarding long-past treatment to Petitioner's back (1987, 2005 and 2009), there is no evidence or testimony to dispute that Petitioner was in a condition of good health and working at full duty for Respondent prior to November of 2011.

Based upon the above reasoning, the Arbitrator adopts the causation opinion of Dr. Templin and finds that the current condition of ill-being in Petitioner's lumbar spine is causally related to his January 12, 2012 accident.

On the issue of (E) whether timely notice was given by the petitioner to respondent, the Arbitrator hereby finds as follows:

The Arbitrator finds that Petitioner gave timely notice of his lumbar injury to Respondent on January 13, 2012.

Petitioner testified that after seeing Dr. Ghaly on January 12, 2012, he called Respondent and spoke with a man he identified as "Ron," whom the evidence in this matter shows to be Roy Belluomini. Petitioner stated that he told Mr. Belluomini that he had injured his back on the job at Alden Estates of Shorewood. Mr. Belluomini admits to receiving a call from Petitioner on January 13, 2012 and that Petitioner informed him who he was and that he thought he had been injured at work for Respondent. Mr. Belluomini further testified that he thought he remembered Petitioner reporting an injury to his hand during that call and that the only notice he got of Petitioner's back injury was when he received the Application for Adjustment of Claim in the mail.

On rebuttal testimony, Petitioner explained that he had spoken with Mr. Belluomini on January 13, 2012 about a back injury, not a hand injury. Petitioner pointed out that his conversation with Mr. Belluomini occurred on January 13, 2012 and that he was not diagnosed with carpal tunnel syndrome until January 23, 2012. A review of the record shows that Petitioner was in fact not diagnosed with carpal tunnel syndrome until January 23, 2012 by Dr. Ghaly. Petitioner and Mr. Belluomini agree that a phone conversation occurred between them on January 13, 2012 and that Petitioner reported that he was injured while working for Respondent at Shorewood. The dispute in their testimony only lies in whether Petitioner reported a back injury from work. The Arbitrator finds the testimony of Petitioner more credible than that of Mr. Belluomini.
Based upon the records and evidence in this matter, the Arbitrator finds that Petitioner did provide Respondent with proper notice, pursuant to Section 6(c) of the Act.

On the issue of (G) petitioner's earnings, the Arbitrator finds as follows:

While working for Respondent, Petitioner worked eight hours per day, five days per week, or 40 hours per week. Petitioner further explained that if he worked 32 hours in a week, that would have been a four day work week, 37 hours would have been a five day work week, and 22 1/2 hours would have been a three day work week. From June through September of 2011, there was some lost time due to rain, which came through the ceilings of the building and flooded the floors. Petitioner also took off some personal days in October and November for duck and goose hunting. On cross-examination, Petitioner testified that he had probably missed five or six days from work with Respondent due to rain. The remainder of the days off would have been for Holidays or personal days.

Respondent's witness, Donald. Kelly testified that when it rained, he would give his guys the option to stay and work in the mud or to go home. He further stated that there would have been no weeks that Petitioner worked during which fewer than forty work hours would have been available to him.

Section 10 of the Act states, in relevant part, "Average weekly wage" which shall mean the actual earnings of the employee in the employment in which he was working at the time of the injury during the period of 52 weeks … divided by the number of weeks and parts thereof remaining after the time so lost has been deducted. Where the employment prior to the injury extended over a period of less than 52 weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee actually earned wages shall be followed." 802 ILCS 305/10.

The Arbitrator has reviewed all records and testimony in this matter and has calculated Petitioner's average weekly wage as follows:

Period Ending	Gross	OT Premium	Hours	Days	Weeks	Wage
6/18/2011	$1,580.00	$0.00	40.00	5.00	1.00	$1,580.00
6/25/2011	$1,264.00	$0.00	32.00	4.00	0.80	$1,264.00
7/2/2011	$1,461.50	$0.00	37.00	5.00	1.00	$1,461.50

7/9/2011	$1,264.00	$0.00	32.00	4.00	0.80	$1,264.00
7/16/2011	$1,224.50	$0.00	31.00	4.00	0.80	$1,224.50
7/23/2011	$1,461.50	$0.00	37.00	5.00	1.00	$1,461.50
7/30/2011	$1,580.00	$0.00	40.00	5.00	1.00	$1,580.00
8/6/2011	$1,264.00	$0.00	32.00	4.00	0.80	$1,264.00
8/13/2011	$1,264.00	$0.00	32.00	4.00	0.80	$1,264.00
8/20/2011	$1,315.50	$0.00	34.00	4.00	0.80	$1,315.50
9/3/2011	$1,232.00	$0.00	32.00	4.00	0.80	$1,232.00
9/10/2011	$866.25	$0.00	22.50	3.00	0.60	$866.25
9/17/2011	$1,540.00	$0.00	40.00	5.00	1.00	$1,540.00
9/24/2011	$866.25	$0.00	22.50	3.00	0.60	$866.25
10/1/2011	$1,232.00	$0.00	32.00	4.00	0.80	$1,232.00
10/8/2011	$1,540.00	$0.00	40.00	5.00	1.00	$1,540.00
10/15/2011	$1,540.00	$0.00	40.00	5.00	1.00	$1,540.00
10/22/2011	$1,540.00	$0.00	40.00	5.00	1.00	$1,540.00
10/29/2011	$1,540.00	$0.00	40.00	5.00	1.00	$1,540.00
11/5/2011	$1,501.50	$0.00	39.00	5.00	1.00	$1,501.50
11/12/2011	$1,540.00	$0.00	40.00	5.00	1.00	$1,540.00
11/19/2011	$1,232.00	$0.00	32.00	4.00	0.80	$1,232.00
11/26/2011	$924.00	$0.00	24.00	3.00	0.60	$924.00
Totals	**$30,773.00**	**$0.00**	**791.00**	**100.00**	**20.00**	**$30,773.00**

The Arbitrator has reviewed the testimony on evidence submitted in this case and finds that Petitioner lost 15 days of work during the period he was employed Respondent. Of the 15 days, 6 days were rain outs and 4 days were Holidays (4th of July, Labor Day, and 2 days for Thanksgiving). Therefore, 10 of the days lost by Petitioner were due to no fault of his own. The Arbitrator finds that Petitioner took 5 days off as personal days. The appropriate denominator for Petitioner's average weekly wage calculation, indicating the number of weeks and parts thereof worked by Petitioner, is 21 (100 days worked + 5 personal days taken off / 5 days in a normal work week).

Based upon the above reasoning, the Arbitrator calculated Petitioner's average weekly wage as follows:

$30,773.00 (earnings) / 21 (weeks and parts thereof worked) = $1,465.38 average weekly wage. The Arbitrator finds that Petitioner's average weekly wage, pursuant to Section 10 of the Act is $1,465.38.

On the issues of payments for medical services, (J), and Section 8(a) choice of physician, the arbitrator hereby finds:

Dr. Templin, in his December 14, 2012 report, opined that all treatment received by Petitioner, including the spinal fusion, was reasonable, necessary and causally related to the work injury. Respondent has offered no evidence or testimony to dispute the reasonableness or necessity of any of Petitioner's medical treatment in this case.

The Arbitrator has reviewed all evidence and testimony in this matter and hereby finds that all treatment received by Petitioner, as contained in Petitioner's Exhibits 1-13 has been reasonable, necessary, and causally related to Petitioner's January 12, 2012 work accident.

Respondent in this case claims that Petitioner has exceed his choice of two physicians, as provided for in Section 8(a) of the Act.

Petitioner began his treatment in this matter with Dr. Serna at Merdian Medical Associates. This constituted Petitioner's first choice. Petitioner was referred by Dr. Serna to Dr. Murphy, also at Merdian Medical. Dr. Murphy then referred Petitioner to Brightmore Physical Therapy for treatment. On January 26, 2012, Dr. Serna referred Petitioner to Dr. Templin who referred him to ATI Physical Therapy for treatment. Petitioner was referred by Dr. Templin to the Pain and Spine Institute and Dr. Sharma for pain management. Petitioner also underwent surgical treatment by Dr. Templin at the Center for Minimally Invasive Surgery. Following surgery, Petitioner was seen for additional post-surgical treatment at St. James Hospital, St. Joseph Hospital, and by Dr. Grunderson. Each of these providers fall within the first choice chain of treatment for Petitioner.

Petitioner was seen on December 26, 2011 by Dr. Cheema at the Holistic Science Pain Clinic. This constituted Petitioner's second choice of physician.

On January 12, 2012, Petitioner was seen by Dr. Ghaly. Petitioner testified at trial that he had not been referred by anyone to the doctor. Dr. Ghaly referred Petitioner for imaging services at Fox Valley Imaging. Dr. Ghaly is Petitioner's third choice of physician and the treatment from Dr. Ghaly and Fox Valley Imagine each fall outside of the two doctors permitted by Section 8(a).

Petitioner has submitted the following outstanding bills for payment as Petitioner's Exhibit 16:

Provider	Beginning	Ending	Balance	Awarded or Denied
ATI	1/17/2012	11/19/2012	$36,708.76	Awarded
Assoc Pathologists of Joliet	6/28/2012	8/11/2012	$1,408.00	Awarded
CVS	1/25/2012	9/11/2012	$2,139.60	Awarded
EMP of Will County	8/11/2012	8/11/2012	$504.95	Awarded
Fox Valley Imaging Center	1/12/2012	1/12/2012	$2,744.00	Denied
Ghaly Neuro Assoc	1/12/2012	1/23/2012	$757.00	Denied
Hinsdale Orthopaedics	7/23/2012	10/22/2012	$76,639.00	Awarded
Holistic Science Pain Clinic	12/26/2011	11/9/2012	$3,390.00	Awarded
Joliet Radiological	6/28/2012	7/25/2012	$467.00	Awarded
MD2X Anesthesia	7/23/2012	7/23/2012	$3,600.00	Awarded
Meridian Medical Associates	12/9/2011	7/10/2012	$5,131.00	Awarded
Osco Drug	1/10/2012	1/17/2012	$32.27	Awarded
Pain & Spine Institute	3/18/2012	8/3/2012	$17,062.76	Awarded
Provena St. Joseph Medical	6/28/2012	8/12/2012	$44,182.73	Awarded
St. James Hospital & Health Centers	7/23/2012	7/24/2012	$132,804.70	Awarded
Trace Ambulance	7/24/2012	7/24/2012	$369.00	Awarded
Totals			$327,940.77	

The Arbitrator has found that the all treatment represented above has been reasonable, necessary and causally related to Petitioner's January 12, 2012 injury. However, the treatment from Dr. Ghaly and Fox Valley Imaging Center fall outside of the two doctor rule and are thus excluded from any award in this matter.

The Arbitrator notes that these bills were claimed as part of the consolidated cases of 12 WC 1636 and 12 WC 2408. The arbitrator has found that all bills, other than Dr. Ghaly's January 23, 2012 bill were for treatment to Petitioner's lower back. Dr. Ghaly's January 23, 2012 bill was for treatment of Petitioner's carpal tunnel syndrome and is addressed in the Arbitrator's decision in case number 12 WC 2408.

Therefore, the Arbitrator hereby orders respondent to pay $324,439.77 in unpaid medical bills, pursuant to Section 8(a) of the Act. Said bills are to be paid consistent with the medical fee schedule

On the issue of (K) prospective medical care, the Arbitrator finds as follows:

In his December 14, 2012 report, Dr. Templin opined that Petitioner needed continued physical therapy, progressing into work conditioning and eventually a Functional Capacity Evaluation.

Based upon all evidence and testimony in the record, the Arbitrator finds that Respondent shall authorize physical therapy, work conditioning and a functional capacity evaluation, as recommended by Dr. Templin.

On the issue of (L) temporary total disability benefits, the Arbitrator finds as follows:

On January 17, 2012, Petitioner began physical therapy treatment with ATI physical therapy. It was noted in the physical therapy records that Petitioner was temporarily and totally disabled. Petitioner remained off work until he was seen by Dr. Cary Templin on March 20, 2012. At that time, Dr. Templin placed Petitioner on work restrictions of working only 8-hours per day, no lifting greater than 10 pounds, bending / squatting /kneeling modifications: to tolerance, and no overhead activities. Petitioner remained on light duty restrictions through his surgery with Dr. Templin on July 23, 2012. (PX 2). At no point was light duty work offered. Following surgery, Petitioner has been kept fully off work by Dr. Templin through the date of trial. In his December 14, 2012 report, Dr. Templin opines that Petitioner remained completely off work during rehabilitation and work conditioning.

The Arbitrator has reviewed all evidence and testimony in this matter and hereby finds that Petitioner was temporarily and totally disabled from January 17, 2012 through December 19, 2012, or period of 48.29 weeks, pursuant to Section 8(b) of the Act.